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# IDAHO CODE

CONTAINING THE

## GENERAL LAWS OF IDAHO ANNOTATED

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Compiled Under the Supervision of the  
Idaho Code Commission

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**TITLES 31-32**

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## PUBLISHER'S NOTE

Since the publication in 1996 of former Volume 6, Titles 31 and 32, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, Replacement Titles 31 and 32 are issued with the approval and under the direction of the Idaho Code Commission.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, court decisions are now being read as they are released by the courts. A consequence of this more current reading of cases, as they are posted on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of April 11, 2006. These cases will be printed in the following reports:

### Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## USER'S GUIDE

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.





# ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E.S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E.S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E.S.) .....	March 20, 1935
1935 (2nd E.S.) .....	July 10, 1935
1935 (3rd E.S.) .....	July 31, 1936
1937 .....	March 6, 1937
1937 (E.S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E.S.) .....	March 1, 1944
1944 (2nd E.S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E.S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E.S.) .....	February 25, 1950
1951 .....	March 12, 1951
1952 (E.S.) .....	January 16, 1952

1953 .....	March 6, 1953
1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971
1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
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1982 .....	March 24, 1982
1983 .....	April 14, 1983
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## CHAPTER 1

## COUNTY BOUNDARIES AND COUNTY SEATS

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- 31-146. Washington county.

**31-101. State divided into counties.** — The state is divided into the several counties in this chapter named and described. The county seats are located at the cities or villages named after the respective county descriptions. [R.C., § 23; compiled and reen. C.L. 3:1; C.S., § 5; I.C.A., § 30-101.]

## STATUTORY NOTES

**Cross References.** — County lines and boundaries, survey to establish, § 31-2705.

Emergency relocation of seat of government, §§ 67-102 — 67-107.

Restrictions on the creation of new counties and the division of old counties, Const., art. 18, §§ 3, 4.

Salary provisions applicable to new counties, § 31-3108.

**Counties Not Now Existing.** Legislative acts have been passed for the following counties, which except for Clark, Lewis and Lincoln, are not now in existence. The original legislation for Clark, Lewis, and Lincoln counties was declared unconstitutional. Subsequent legislation was passed establishing these counties. See §§ 31-119, 31-133 and 31-134.

*Alta County.* County created and county seat located at Hailey, act in effect Mar. 3, 1891, 1890-1891, p. 120; act creating county declared unconstitutional. *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891).

*Alturas County.* County created and county

seat located at Esmeralda, act approved Feb. 4, 1864, 1 T. Sess. 628; boundaries between Boise and Alturas counties defined, act approved Jan. 12, 1866, 3 T. Sess. 214; boundaries between Alturas and Oneida counties defined, act approved Jan. 8, 1877, 9 T. Sess. 90; boundaries between Lemhi and Alturas counties defined, act approved Feb. 9, 1881, 11 T. Sess. 329; boundaries redefined, act approved Feb. 7, 1889, 15 T. Sess. 37; county abolished, act approved Mar. 5, 1895, S. L. 1895, p. 31.

*Clark County.* County created from Kootenai county and county seat temporarily located at Coeur d'Alene, act approved Feb. 28, 1905, S. L. 1905, p. 76; act creating county declared unconstitutional. Note that Clark county now existing was created in 1919. See § 31-119. *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905).

*Lah-Toh County.* County created and county seat located at Coeur d'Alene, act approved Dec. 22, 1864, 2 T. Sess. 432; law creating county repealed, act approved Jan. 9, 1867, 4 T. Sess. 126.

*Lewis County.* County created from Kootenai county and county seat temporarily located at Sandpoint, act approved Feb. 28, 1905, S. L. 1905, p. 76; act creating county declared unconstitutional. McDonald v. Doust, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905). Note that Lewis county now existing was created from Nez Perce county. See § 31-133

*Lincoln County.* County created and county seat located at Shoshone, act became a law Mar. 3, 1891, 1890-1891, p. 120; act creating county declared unconstitutional. People ex rel. Lincoln County v. George, 3 Idaho 72, 26

P. 983 (1891). Note that Lincoln county now existing was created Mar. 18, 1895. See § 31-134.

*Logan County.* County created and temporary county seat located at Shoshone, act approved Feb. 7, 1889, 15 T. Sess. 37; county abolished, act approved Mar. 5, 1895, S. L. 1895, p. 31.

*Selway County.* Enabling act for creation of county, approved Mar. 14, 1917, S. L. 1917, ch. 127, p. 418; creation of county defeated at special election, July 2, 1917, records in office of recorder of Idaho county.

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political

Subdivisions, § 26 et seq..

**C.J.S.** — 20 C.J.S., Counties, § 13 et seq.

**31-102. Definition of descriptive terms.** — The words, “range,” “township” and “section” as employed in this chapter refer to the Boise meridian and base line of the United States survey, except in such cases as the word “range” obviously refers to a range of mountains. In the description of courses the words, “north,” “south,” “east” and “west” refer to true courses. [Compiled and reen. C.L. 3:2; C.S., § 6; I.C.A., § 30-102.]

**31-103. Ada county.** — Ada county is described as follows: beginning at a point in the center of the channel of the Boise river where the section line between sections fifteen (15) and sixteen (16), township three (3) north, range four (4) east, crosses said Boise river;

Northern boundary. Thence down the center of the channel of the Boise river to a point opposite the mouth of More’s creek. Thence in a straight line north forty-four (44) degrees and thirty-eight (38) minutes west until the said line intersects the north line of township five (5) north (12 Ter. Sess. 67); thence west to the northwest corner of township five (5) north, range one (1) west;

Western boundary. Thence south to the northwest corner of township three (3) north, range one (1) west; thence east to the northwest corner of section four (4), township three (3) north, range one (1) west; thence south to the southeast corner of section thirty-two (32), township two (2) north, range one (1) west; thence west to the northwest corner of township one (1) north, range one (1) west; thence south to the point in the middle of the channel of Snake river, where the line between township one (1) south, range one (1) west, and township one (1) south [ , range two (2) west, crosses the said river];

Southern boundary. Thence southeasterly up the center of the channel of the said Snake river to a point where the section line between sections thirty-three (33) and thirty-four (34), township five (5) south, range four (4) east crosses the said Snake river;

Eastern boundary. Beginning at a point in the center of the channel of the Snake river where the section line between sections thirty-three (33) and thirty-four (34), township five (5) south, range four (4) east, Boise meridian,



crosses said Snake river; thence extending in a northerly direction along the north and south center line of townships five (5), four (4), three (3), two (2) and one (1) south, range four (4) east, Boise meridian, to the base line and thence in a northerly direction along the north and south center line of townships one (1), two (2) and three (3) north, range four (4) east, Boise meridian, to a point in the center of the channel of the Boise river where the section line between sections fifteen (15) and sixteen (16), township three (3) north, range four (4) east, Boise meridian, crosses said Boise river, the point of beginning.

County seat — Boise City. [R.C., § 23a; compiled and reen. C.L. 3:3; C.S., § 7; am. 1923, ch. 136, § 2, p. 200; I.C.A., § 30-103.]

### STATUTORY NOTES

**Compiler's Notes.** — County created from Boise county and county seat located at Boise City by act approved Dec. 22, 1864, 2 T. Sess. 430; boundary established between Ada and Idaho counties, 4 T. Sess. 124, act approved Jan. 10, 1867; boundary between Idaho and Ada counties redefined, 7 T. Sess. 30, act approved Jan. 10, 1873; boundary between Ada and Boise counties redefined, 12 T. Sess. 67, act approved Jan. 31, 1883 (see field notes in county recorder's office); Canyon county created, including portion of Ada county, 1890-1891, p. 155, act approved Mar. 7, 1891; boundary between Elmore and Ada counties redefined, 1895, p. 15, act approved Feb. 9, 1895; boundary between Elmore and Ada counties redefined, 1899, p. 234, act approved Feb. 14, 1899; law defining boundaries and locating county seat reen. R.C., § 23a.

S.L. 1923, ch. 136, § 2 in amending C.S., § 7 failed to include at the end of the paragraph commencing with the words "Western boundary. Thence south" the words, ", range two (2) west, crosses the said river;"

#### **Boundary Changes Affecting Above Section:**

*Election of 1948.* S.L. 1947, ch. 150 conferred authority upon the electors residing within the following described territory to vote at the general election to be held in 1948

upon the question whether such territory should be detached from Ada county and added to Elmore county:

"Beginning at a point where the section line between sections thirty-three (33) and thirty-four (34), Township five (5) South, Range four (4) East of Boise Meridian, crosses the center of the channel of the Snake River;

"Thence North along the East section line of Sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28) and thirty-three (33), Township five (5) South, Range four (4) East, Boise Meridian, continuing thence North along the East section line of Sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28), and thirty-three (33), Township four (4) South, Range four (4) East Boise Meridian to the northeast corner of Section four (4), Township four (4) South, Range four (4) East, Boise Meridian;

"Thence West along the North boundary of Township four (4) South, Range four (4) East, Township four (4) South, Range three (3) East, Township four (4) South, Range two (2) East to its intersection with the center of the channel of Snake River;

"Thence southeasterly up the center of the channel of the said Snake River to the point of beginning."

The proposal was voted on at the 1948 general election and was carried.

**31-104. Adams county.** — Adams county is described as follows: beginning at a point on the boundary line between the states of Idaho and Oregon, the same being the middle of the center channel of Snake river, three thousand nine hundred sixty (3,960) feet in a southwesterly direction from the mouth of Wildhorse river;

Southern boundary. Then in an easterly direction fifteen and one-half (15½) miles to a point one-half mile east of the west quarter corner, section six (6), township seventeen (17) north, range two (2) west; thence south about twelve (12) miles to the intersection of said line with Cow creek; thence southeast down the center line of Cow creek to its confluence with the

Weiser river; thence south across the Weiser river to a point five hundred (500) feet east of the north quarter corner of section twenty-nine (29), township fifteen (15) north, range two (2) west; thence east about three and three-quarters ( $3\frac{3}{4}$ ) miles to a point one thousand three hundred twenty (1,320) feet east of the northwest corner of section twenty-five (25), said township and range; thence south eight and one-half ( $8\frac{1}{2}$ ) miles to a point one thousand three hundred twenty (1,320) feet east of the west quarter corner of section one (1), township thirteen (13) north, range two (2) west; thence in a southeasterly direction six and one-half ( $6\frac{1}{2}$ ) miles to a point one thousand three hundred twenty (1,320) feet south and one thousand three hundred twenty (1,320) feet east of the west quarter corner of section twenty-four (24), township thirteen (13) north, range one (1) west; thence east (1911, ch. 31, § 2, pp. 67, 68) to the summit dividing the waters of the Payette and Weiser rivers;

Eastern boundary. Thence along said divide in a northerly direction to a point on said divide known as Big Rock Flat, where the waters flow into the Little Salmon; thence in a northeasterly direction on a low divide separating the waters of the Little Salmon and Payette rivers to a point east of the northern point of Little Salmon Meadows;

Northern boundary. Thence west to the Little Salmon river; thence down the Little Salmon river to a point east of the point where the section line between sections six (6) and seven (7), township twenty-two (22) north, range one (1) east, intersects said meridian; thence west to the middle of the main channel of Snake river (R. C., § 23w), the same being the boundary line between the states of Idaho and Oregon;

Western boundary. Thence in a southerly direction following said boundary line between said states of Idaho and Oregon, to the point of beginning (1911, ch. 31, § 2, p. 68).

County seat — Council. [Compiled and reen. C.L. 3:4; C.S., § 8; I.C.A., § 30-104.]

#### STATUTORY NOTES

**Cross References.** — Washington county, boundaries, § 31-146.

**Compiler's Notes.** — County created from Washington county (as defined in R.C., § 23w) and county seat temporarily located at Council, 1911, ch. 31, p. 67, act approved Mar. 3, 1911, in effect Mar. 15, 1911; at

general election Nov. 5, 1912, permanent county seat located at Council. Compiled Laws corrected error in southern boundary by substitution of "in an easterly direction" for "south and in a southeasterly direction," found in 1911, ch. 31, p. 67, § 2, lines 7 and 8.

**31-105. Bannock county.** — Bannock county is described as follows: beginning at the intersection of the township line between townships four (4) and five (5) south, with the Snake river;

Western boundary. Thence down the Snake river southwesterly to the mouth of Portneuf river; thence up the Portneuf river to the intersection of the Portneuf river with the west boundary of section eight (8), township six (6) south, range thirty-four (34) east Boise meridian; thence south four and one-quarter ( $4\frac{1}{4}$ ) miles to the southeast corner of section thirty-one (31), township six (6) south, range thirty-four (34) east Boise meridian; thence



west to the northeast corner of section six (6), township seven (7) south, range thirty-four (34) east, Boise meridian; thence south four (4) miles to the southeast corner of section nineteen (19); thence east one (1) mile to the northeast corner of section twenty-nine (29); thence south four (4) miles to the southeast corner of section eight (8) township eight (8) south, range thirty-four (34) east Boise meridian; thence east two (2) miles to the northeast corner of section fifteen (15); thence south two and one-half ( $2\frac{1}{2}$ ) miles to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-seven (27); thence east one (1) mile to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-six (26); thence south one and one-half ( $1\frac{1}{2}$ ) miles to the southeast corner of section thirty-five (35), township eight (8) south, range thirty-four (34) east Boise meridian; thence east one (1) mile to the northeast corner of section one (1), township nine (9) south, range thirty-four (34) east, Boise meridian; thence south two (2) miles to the southeast corner of section twelve (12); thence east two (2) miles to the northeast corner of section seventeen (17), township nine (9) south, range thirty-five (35) east, Boise meridian; thence south one and one-half ( $1\frac{1}{2}$ ) miles to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty (20); thence west one-half ( $\frac{1}{2}$ ) mile to the center of section twenty (20); thence south two and one-half ( $2\frac{1}{2}$ ) miles to the south quarter ( $S\frac{1}{4}$ ) corner of section thirty-two (32), township nine (9) south, range thirty-five (35) east, Boise meridian; thence east to the northeast corner of section five (5), township ten (10) south, range thirty-five (35) east, Boise meridian; thence south one and one-quarter ( $1\frac{1}{4}$ ) miles to the southeast corner of the northeast quarter ( $NE\frac{1}{4}$ ) of the northeast quarter ( $NE\frac{1}{4}$ ) of section eight (8); thence west one-quarter ( $\frac{1}{4}$ ) mile; thence south one-quarter ( $\frac{1}{4}$ ) mile; thence west one and one-quarter ( $1\frac{1}{4}$ ) miles; thence south three-quarters ( $\frac{3}{4}$ ) of a mile; thence west one-quarter ( $\frac{1}{4}$ ) mile to the southwest corner of lot one (1) of section eighteen (18), township ten (10) south, range thirty-five (35) east, Boise meridian; thence south on the range line three and three-quarter ( $3\frac{3}{4}$ ) miles to the southwest corner of township ten (10) south, range thirty-five (35) east, Boise meridian; thence east one and three-quarters ( $1\frac{3}{4}$ ) miles to the northwest corner of section four (4), township eleven (11) south, range thirty-five (35) east, Boise meridian; thence south one (1) mile to the northwest corner of section nine (9); thence east one-quarter ( $\frac{1}{4}$ ) mile; thence south one-half ( $\frac{1}{2}$ ) mile; thence east one-half ( $\frac{1}{2}$ ) mile; thence south one-half ( $\frac{1}{2}$ ) mile; thence east one-quarter ( $\frac{1}{4}$ ) mile to the northwest corner of section fifteen (15); thence south one-half ( $\frac{1}{2}$ ) mile to the west one-quarter ( $\frac{1}{4}$ ) corner of section fifteen (15); thence east one (1) mile; thence south one-half ( $\frac{1}{2}$ ) mile to the northwest corner of section twenty-three (23), township eleven (11) south, range thirty-five (35) east, Boise meridian; thence following the unbroken crest of the main mountain range to the southeast corner of section twenty-four (24), township eleven (11) south, range thirty-five (35) east, Boise meridian; thence southerly and easterly along the crest of the mountains between Malad and Marsh valleys to a point on the north and south center line of section thirty-three (33), township twelve (12) south, range thirty-six (36) east, Boise meridian; thence north to the center line of section twenty-eight (28), township twelve (12) south, range thirty-six (36) east, Boise meridian; thence east three and

one-half ( $3\frac{1}{2}$ ) miles through the center of sections twenty-seven (27), twenty-six (26) and twenty-five (25) to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-five (25), township twelve (12) south, range thirty-six (36) east, Boise meridian; thence south between ranges thirty-six (36) and thirty-seven (37) east, Boise meridian; to the top of the crest of the mountains between Malad and Marsh valleys; thence in an easterly and southerly direction on the crest of the mountains between Malad and Marsh valleys to a point on the Oxford mountain range where the same is intersected by the one-sixteenth ( $1/16$ ) section line, eighty (80) rods, more or less, south of the township line between township thirteen (13) and fourteen (14) south.

Southern boundary. Thence east to the southeast corner of lot one (1), section four (4), township fourteen (14) south, range thirty-nine (39) east, Boise meridian; thence north six and one-quarter ( $6\frac{1}{4}$ ) miles to the northwest corner of section three (3), township thirteen (13) south, range thirty-nine (39) east, Boise meridian; thence east on township line sixteen and one-quarter ( $16\frac{1}{4}$ ) miles, more or less, to the summit of the Bear River range.

Eastern boundary. Thence north following the unbroken crest of the Bear River range to its intersection with the township line between townships nine (9) and ten (10) south; thence west on the township line to the southwest corner of section thirty-two (32), township nine (9) south, range forty-one (41) east, Boise meridian; thence north three (3) miles to the northwest corner of section twenty (20); thence west one (1) mile to the southwest corner of section eighteen (18), township nine (9) south, range forty-one (41) east, Boise meridian; thence north nine (9) miles to the northwest corner of section six (6), township eight (8) south, range forty-one (41) east, Boise meridian; thence west four (4) miles to the southwest corner of section thirty-three (33), township seven (7) south, range forty (40) east, Boise meridian; thence north six (6) miles to the northwest corner of section four (4), township seven (7) south, range forty (40) east, Boise meridian; thence west one and one-half ( $1\frac{1}{2}$ ) miles to the southwest corner of section thirty-one (31), township six (6) south, range forty (40) east, Boise meridian; thence north six (6) miles to the northwest corner of township six (6) south, range forty (40) east, Boise meridian; thence west six (6) miles to the southwest corner of township five (5) south, range thirty-nine (39) east, Boise meridian; thence north to the township line between townships four (4) and five (5) south.

Northern boundary. Thence west along said township line between townships four (4) and five (5) south to the place of beginning. [Compiled and reen. C.L. 3:5; C.S., § 9; am. 1927, ch. 256, § 4, p. 431; I.C.A., § 30-105.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Bingham county and county seat located at Pocatello by act approved Mar. 6, 1893, p. 170; law defining boundaries and locating county seat, reen. R. C., § 23b; provision made that at general election in November, 1918, voters

were to decide whether certain territory should be detached from Bannock and added to Franklin county, act approved Feb. 8, 1917, S.L. 1917, ch. 96, p. 327.

Caribou county created therefrom 1919, ch. 5, p. 28. Election was held in November, 1920,



to decide whether certain territory should be detached from Bannock county and Caribou county organized therefrom, 1919, ch. 5, §§ 23-28, pp. 40, 41.

Sections 1, 2, and 3 of S.L. 1927, ch. 256, providing for surveys to establish new boundary lines between Bannock and Oneida counties and between Bannock and Power counties are set out as follows:

§ 1. "The county commissioners of Bannock and Oneida counties respectively are hereby authorized and ordered to authorize their respective county surveyors to jointly establish the boundary lines between such counties to conform to the boundary lines of Bannock common to Oneida county, as the same are described in section 9 of chapter 3 of the Idaho Compiled Statutes as the same is amended by section 4 of this act [this section], and to conform to the boundary lines of Oneida county common to Bannock county as the same are described in section 42 of chapter 3 of the Idaho Compiled Statutes as the same is amended by section 6 of this act [§ 31-138]."

§ 2. "The county commissioners of Bannock and Power counties respectively are hereby authorized and are hereby ordered to authorize their respective county surveyors to jointly establish the boundary line between such counties to conform to the boundary line of Bannock county common to Power county as the same is described in section 9 of chapter 3 of the Idaho Compiled Statutes as the same is amended by section 5 of this act [§ 31-141], and to conform to the boundary line of Power county common to Bannock county as the same is described in section 45 of chapter 3 of the Idaho Compiled Statutes as the same is amended by section 5 of this act [§ 31-141]."

§ 3. "The establishing of all boundary lines under the provisions of this act shall in all respects be done and paid for in conformity to the provisions of section 3670 of chapter 151 of the Idaho Compiled Statutes [§ 31-2705]."

By S.L. 1931, ch. 223, the electors residing in certain described territory were authorized to vote, at the general election in November 1932, on the question of whether such territory should be detached from Bannock county and added to Franklin county. The proposal was defeated at the general election held in November, 1932.

S.L. 1947, ch. 255 conferred authority upon the electors residing in certain described territory to vote at the general election to be held in November, 1948, upon the question whether such territory shall be detached from Bannock county and added to Franklin county. The proposal was defeated at the general election held in November, 1948.

### **Boundary Changes Affecting Above Section:**

*Election of 1946.* S.L. 1945, ch. 145 conferred authority upon electors residing within the following described territory to vote at the general election to be held in November, 1946, upon the question whether such territory shall be detached from Bannock county and added to Franklin county:

Beginning at a point where the present North boundary line of Franklin County intersects the West boundary line of Bear Lake County; thence northerly along the boundary line common to Bear Lake County and Bannock County to the intersection with the township line common to Township 12 South, Range 42 East, Boise Meridian, and Township 11 South, Range 42 East, Boise Meridian, thence West along said township line across Ranges 42 East and 41 East to the South Quarter corner of Section 31, Township 11 South, Range 41 East, Boise Meridian, thence North along the center line of said Section 31 of the North-East corner of the South East Quarter of the North West Quarter of said Section 31; thence West along the North line of the South East Quarter of the North West Quarter of said Section 31 to the Northwest corner thereof; thence North along the East line of the North West Quarter of the North West Quarter of said Section 31 to the North line of said Section 31; thence West along the North line of said Section 31 and the North line of Section 36, Township 11 South, Range 40 East, Boise Meridian to its intersection with Bear River, thence southerly along Bear River to its intersection with the township line between Township 11 South, Range 40 East, Boise Meridian, and Township 12 South, Range 40 East, Boise Meridian; thence West along said township line across Ranges 40 East and 39 East to the Section corner common to Sections 34 and 33, Township 11 South, Range 39 East, Boise Meridian, and Sections 3 and 4, Township 12 South, Range 39 East, Boise Meridian, thence South along the West line of Sections 3, 10, 15, 22, 27 and 34, Township 12 South, Range 39 East, Boise Meridian to its intersection with the North boundary line of Franklin County; thence East along said boundary line to the point of beginning.

And also:

Beginning at the Section corner common to Sections 27, 28, 33 and 34, Township 13 South, Range 39 East, Boise Meridian; thence West along the Section line common to Sections 28 and 33, 29 and 32, 30 and 31, Township 13 South, Range 39 East, Boise Meridian, and Sections 25 and 36, 26 and 35 Township 13 South, Range 38 East, Boise Meridian, to a point where said line intersects the West boundary line of the Union Pacific Railroad Company's right-of-way in Township 13 South, Range 38 East, Boise Meridian;



thence North along the West boundary line of said right-of-way to a point where said West Boundary line intersects the Section line common to Sections 14 and 23, Township 13 South, Range 38 East, Boise Meridian; thence West along the line common to Sections 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, Township 13 South, Range 38 East, Boise Meridian, and Sections 13 and 24, 14 and 23, 15 and 22, Township 13 South, Range 37 East, Boise Meridian, to its intersection with the boundary line between Bannock County and Oneida County; thence southeasterly along said boundary line to a point common to Oneida County, Bannock County and Franklin County; thence East along the South line of Bannock County and the North line of Franklin County to a point on the East line of Section 4, Township 14 South, Range 39 East, Boise Meridian; thence North along the East line of said Section 4 and the East line of Section 33, Township 13 South, Range 39 East, Boise Meridian, to the point of beginning.

The proposal was voted on at the 1946, November general election and was carried.

*Election of 1948.* S.L. 1947, ch. 247 conferred authority upon the electors residing in the following described territory to vote at the general election to be held in November, 1948, upon the question whether such territory should be detached from Bannock County and added to Caribou County;

1. In Township 5 South, Range 37 East, all that part of this Township lying southeasterly of the summit of the Portneuf Mountains, consisting of Sections 25 and 36 and fractional Sections 1, 13, 23, 24, 26, 33, 34, and 35.

2. In Township 5 South, Range 38 East, all that part of this Township lying easterly of the summit of the Portneuf Mountains, Sections 6, 7 and 18 only being fractional.

3. In Township 6 South, Range 37 East, all that part of this Township lying Easterly of the summit of the Portneuf Mountains comprising Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36, and fractional Sections 4, 9, 16, 21, 28 and 33.

4. All of Township 6 South, Range 38 East.

5. All of Township 6 South, Range 39 East.

6. In Township 7 South, Range 37 East all that part of this Township lying easterly of the summit of the Portneuf Mountains comprising Sections 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35 and 36, and fractional Sections 3, 4, 10, 15, 16, 21, 28 and 33.

7. All of Township 7 South, Range 38 East.

8. All of Township 7 South, Range 39 East.

9. In Township 7 South, Range 40 East, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31 and 32.

10. In Township 8 South, Range 37 East, all that part of this Township on the drainage

to Pebble Creek comprising Sections 1, 2, 3, 11, 12, 13, 14 and 23, and fractional Sections 4, 9, 10, 15, 22, 24, 26 and 27.

11. In Township 8 South, Range 38 East, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 24, and fractional Sections 23, 25, 26 and 36.

12. All of Township 8 South, Range 39 East.

13. All of Township 8 South, Range 40 East.

14. In Township 9 South, Range 39 East, Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 21, 22, 23, 27, 28, 33 and 34 and fractional Sections 1, 12, 13, the North 480 Acres of Section 18, the East 480 Acres of Section 20, fractional Section 24, the East Half of Section 29, the East Half of Section 32 and the West Half of Section 35.

15. In Township 9 South, Range 40 East, Sections 1, 2, 3, 4, 5, 6, 9 and 10, the North Half of Section 7, the North Half of Section 8, and that part of Section 12 lying northeasterly of the right-of-way of the Union Pacific Railroad.

Described by metes and bounds as follows:

Beginning at the Northeast corner of Township 5 South, Range 38 East of the Boise Meridian; thence South along the East boundary of said Township 6 miles to the Southeast corner of said Township 5 South, Range 38 East; thence East along the north boundary of Township 6 South, Range 39 East 6 miles to the Northeast corner of said Township 6 South, Range 39 East; thence South along the East boundary of said Township 6 South, Range 39 East 6 miles to the Southeast corner of said Township 6 South, Range 39 East; thence East along the North boundary of Township 7 South, Range 40 East  $1\frac{1}{2}$  miles, more or less, to the Northeast corner of Section 5, Township 7 South, Range 40 East; thence South along the Section Line 6 miles to the Southeast corner of Section 32, Township 7 South, Range 40 East; thence East along the North boundary of Township 8 South, Range 40 East 4 miles to the Northeast corner of said Township 8 South, Range 40 East; thence South along the East boundary of said Township 8 South, Range 40 East 6 miles to the Southeast corner of said Township 8 South, Range 40 East; thence continuing South along the East boundary of Township 9 South, Range 40 East approximately  $1\frac{3}{4}$  miles to the North boundary of the right-of-way of the Union Pacific Railroad; thence northwesterly along the North line of the right-of-way of the Union Pacific Railroad  $1\frac{1}{4}$  miles, more or less, to a point on the West boundary of Section 12; thence North along the West boundary of Section 12, 800 feet, more or less, to the Southeast corner of Section 2; thence West along the South boundary of Section 2, 1 mile to the corner of Sections 2, 3, 10 and 11; thence South along the East boundary of said

Section 10, 1 mile to the corner of Sections 10, 11, 14 and 15; thence West along the South boundary of Sections 10 and 9, 2 miles to the corner of Sections 8, 9, 16 and 17; thence North along the West boundary of Section 9,  $\frac{1}{2}$  mile; thence West through the center of Sections 8 and 7, 2 miles to the Quarter Section corner on the West boundary of Section 7 and on the East boundary of Section 12, Township 9 South, Range 39 East; thence South along the East boundary of said Township 9 South, Range 39 East,  $2\frac{1}{2}$  miles, more or less, to the corner of fractional Sections 24 and 25; thence West along the North boundary of fractional Section 25 and Section 26, 1 mile, more or less, to the Quarter Section corner on the North boundary of Section 26; thence South through the center of Sections 26 and 35, 2 miles to the Quarter Section corner on the South boundary of Section 35; thence West along the South boundary of Sections 35, 34, 33 and 32, 3 miles to the Quarter Section corner on the South boundary of said Section 32; thence North through the center of Sections 32 and 29, 2 miles to the Quarter Section corner between Sections 20 and 29; thence West along the South boundary of said Section 20,  $\frac{1}{4}$  mile; thence North through the center of the West Half of said Section 20, 1 mile to a point on the North boundary of said Section 20; thence West along the North boundary of said Section 20,  $\frac{1}{4}$  mile to the corner of Sections 17, 18, 19 and 20; thence North along the West boundary of Section 17,  $\frac{1}{4}$  mile; thence West through the center of the South Half of Section 18, 1 mile to a point on the West boundary of Section 18 and the West boundary of Township 9 South, Range 39 East; thence North along the West boundary of Township 9 South, Range 39 East,  $2\frac{1}{2}$  miles, more or less, to the Northeast corner of Township 9 South, Range 38 East; thence West along the South boundary of Township 8 South, Range 38 East,  $\frac{1}{2}$  mile more or less, to the summit of the Fish Creek Divide; thence north-northwesterly along the summit of the Fish Creek Mountains  $3\frac{1}{4}$  miles, more or less, to a point on the South boundary of Section 14, Township 8 South, Range 38 East; thence West along the South boundary of Sections 14, 15, 16, 17 and 18, Township 8 South, Range 38 East, to a point on the summit on the South watershed of Pebble Creek and on the West boundary of said Township 8 South, Range 38 East; thence southwesterly along the summit of the South watershed of Pebble Creek, 2 miles, more or less, to its junction with the summit of the Portneuf Mountains in Section 26, Township 8 South, Range 37 East; thence northwesterly along the summit of the Portneuf Mountains through Sections 26, 27, 22, 15, 10, 9, and 4 of Township 8 South, Range 37 East; Sections 33, 28, 21, 16, 15, 10, 3 and 4 of Township 7

South, Range 37 East; Sections 33, 28, 21, 16, 9 and 4 of Township 6 South, Range 37 East; Sections 33, 34, 35, 26, 23, 24 and 13 of Township 5 South, Range 37 East; Sections 18, 7 and 6, Township 5 South, Range 38 East, and Section 1, Township 5 South, Range 37 East to the corner common to Township 5 South, Ranges 37 and 38 East; thence East along the North boundary of Township 5 South, Range 38 East, 6 miles to the point of beginning.

The proposal was voted on at the 1948 general election and was carried.

*Election of 1948.* S.L. 1947, ch. 248 conferred authority upon the electors residing within the following described territory to vote at the general election to be held in November, 1948, upon the question whether such territory shall be detached from Bannock county and added to Caribou county:

1. In Township 9 South, Range 39 East, the East  $\frac{1}{2}$  of Section 26, the East  $\frac{1}{2}$  of Section 35 and fractional Sections 25 and 36.

2. In Township 9 South, Range 40 East, Sections 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, the South  $\frac{1}{2}$  of Section 7; the South  $\frac{1}{2}$  of Section 8 and fractional Section 12.

3. In Township 9 South, Range 41 East, Sections 19, 30 and 31.

4. In Township 10 South, Range 39 East, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34, 35 and 36 and the North  $\frac{1}{2}$  of Section 28.

5. In Township 10 South, Range 40 East, entire.

6. In Township 10 South, Range 41 East, all that part of this township now within Bannock County.

7. In Township 11 South, Range 39 East, Sections 1, 2, 3, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, the East  $\frac{1}{2}$  of Section 10, the East  $\frac{1}{2}$  of Section 15, and the East  $\frac{1}{2}$  of Section 22.

8. In Township 11 South, Range 40 East, all that part of this township except that portion of Section 36 lying East of Bear River.

9. In Township 11 South, Range 41 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36, and fractional Sections 1, 2 and 12, the East  $\frac{1}{2}$  and the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31.

10. In Township 11 South, Range 42 East, all that part of this township now within Bannock County.

Described by metes and bounds as follows:

Beginning at a point on the East boundary of Township 9 South, Range 40 East, Boise-Meridian, on the East boundary of Section 12 and on the North boundary of the right of way of the Union Pacific Railroad; thence Northwesterly along the North line of the right of way of the Union Pacific Railroad  $1\frac{1}{4}$  miles,



more or less, to a point on the West boundary of Section 12, and the East boundary of Section 11; thence North along the East boundary of Section 11, 800 feet, more or less, to the Northeast corner of Section 11; thence West along the North boundary of Section 11, 1 mile to the corner of Sections 2, 3, 10 and 11; thence South along the West boundary of Section 11, 1 mile to the corner of Sections 10 and 11, 14 and 15; thence West along the North boundary of Sections 15 and 16, 2 miles to the corner of Sections 8, 9, 16 and 17; thence North along the East boundary of Section 8,  $\frac{1}{2}$  mile; thence West through the center of Sections 8 and 7, 2 miles to the  $\frac{1}{4}$  Section Corner on the West boundary of Section 7, Township 9 South, Range 40 East; thence South along the West boundary of said Township 9 South, Range 40 East, 2- $\frac{1}{2}$  miles, more or less, to the corner of fractional Sections 24 and 25, Township 9 South, Range 39 East; thence West along the North boundary of fractional Section 25 and Section 26, 1 mile, more or less, to the  $\frac{1}{4}$  Section Corner on the North boundary of Section 26; thence South through the center of Sections 26 and 35, 2 miles to the  $\frac{1}{4}$  Section Corner on the South Boundary of Section 35; thence West along the North boundary of Sections 2, 3 and 4 approximately 3 miles to the Northwest corner of Section 4, Township 10 South, Range 39 East; thence South along the Section Line between Sections 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 4- $\frac{1}{2}$  miles to the  $\frac{1}{4}$  Section Corner between Sections 28 and 29; thence East along the East and West center line of Section 28, 1 mile to the  $\frac{1}{4}$  Section Corner between Sections 27 and 28; thence South along the Section Line between Sections 27 and 28, 33 and 34, 1- $\frac{1}{2}$  miles to the Southwest corner of Section 34, Township 10 South, Range 39 East; thence East along the South boundary of Section 34, Township 10 South, Range 39 East, 300 feet, more or less, to the Northwest corner of Section 3, Township 11 South, Range 39 East; thence South along the Section Line between Sections 3 and 4, 1 mile to the corner of Sections 3, 4, 9 and 10; thence East along the South boundary of Section 3,  $\frac{1}{2}$  mile to the  $\frac{1}{4}$  Section Corner between Sections 3 and 10; thence South through the center of Sections 10, 15 and 22, 3 miles to the  $\frac{1}{4}$  Section corner between Sections 22 and 27; thence East along the

South boundary of Section 22,  $\frac{1}{2}$  mile to the corner of Sections 22, 23, 26 and 27; thence South along the Section Line between Sections 26 and 27, 34 and 35, 2 miles to the Southwest corner of Section 35, Township 11 South, Range 39 East; thence East following the South boundary of Township 11 South, Range 39 East and Township 11 South, Range 40 East to an intersection with Bear River on the South boundary of Section 36, Township 11 South, Range 40 East; thence Northerly, following the wanderings of Bear River to a point on the North boundary of Section 36, Township 11 South, Range 40 East; thence East along the South boundary of Section 25, Township 11 South, Range 40 East five-eighths of a mile, more or less, to the corner of Sections 25, 30, 31 and 36, Township 11 South, Range 40 and 41 East; thence East along the South boundary of Section 30, Township 11 South, Range 41 East,  $\frac{1}{4}$  mile to the Northwest corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; thence South  $\frac{1}{4}$  mile to the Southwest corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; then East  $\frac{1}{4}$  mile to the Southeast corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; then South  $\frac{3}{4}$  mile to the  $\frac{1}{4}$  Section Corner on the South boundary of said Section 31; thence East along the South boundary of Township 11 South, Range 41 East and Township 11 South, Range 42 East to a point on the crest of the Bear River Range on the South boundary of Section 31, Township 11 South, Range 42 East; thence North, following the unbroken crest of the Bear River Range to its intersection with the Township Line between Township 9 and 10 South; thence West on the Township Line to the Southwest corner of Section 32, Township 9 South, Range 41 East; thence North along the East boundary of Sections 31, 30 and 19 to the corner of Sections 17, 18, 19 and 20, Township 9 South, Range 41 East; thence West along the North boundary of Section 19, 1 mile to the corner of Sections 13, 18, 19 and 24, Township 9 South, Range 40 and 41 East; thence North along the East boundary of Section 13, and Section 12, Township 9 South, Range 40 East, 1- $\frac{1}{4}$  miles, more or less, to a point on the North boundary of the right of way of the Union Pacific Railroad, the place of beginning.

The proposal was voted on at the 1948 general election and was carried.

**31-106. Bear Lake county.** — Bear Lake county is described as follows: beginning at the twenty-third (23d) mile post on the boundary line between Utah and Idaho;

Western boundary. Thence northerly along the summit of the range of mountains between Cache valley and Bear Lake valley to the corner of townships nine (9) and ten (10) south, range forty-one (41) east;

Northern boundary. Thence east twelve (12) miles; thence north to the summit of the divide between the waters of Bear river and the waters of Blackfoot river; thence easterly along said last named summit to the line between Wyoming and Idaho;

Eastern boundary. Thence south on said last named line to the southeast corner of Idaho;

Southern boundary. Thence west to the place of beginning.

County seat — Paris. [Compiled and reen. C.L. 3:6; C.S., § 10; I.C.A., § 30-106.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from T. Sess. 720; law defining boundaries and Oneida county and county seat located at the locating county seat reen. R.C., § 23c. town of Paris by act approved Jan. 5, 1875, 8

**31-107. Benewah county.** — Benewah county is described as follows: beginning at the point of intersection of the Idaho-Washington state line with the north boundary line of township forty-six (46) north;

Western boundary. Thence south along said state line to the point of intersection of said state line with the north boundary line of the county of Latah, as now constituted;

Southern boundary. Thence in a southeasterly and easterly direction along said north boundary line of the county of Latah to the point of intersection of said north boundary line of Latah county with the west boundary line of the county of Shoshone, as the same is now constituted;

Eastern boundary. Thence along said west boundary line of Shoshone county to the point of intersection of said west boundary line of Shoshone county with the north boundary line of section twenty-two (22), township forty-seven (47) north, range one (1) east;

Northern boundary. Thence west along the north boundary line of sections twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township forty-seven (47) north, range one (1) east, to the point of intersection with the Boise meridian; thence along said Boise meridian to the northeast corner of section twenty-four (24), township forty-seven (47) north, range one (1) west; thence west along the north boundary line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township forty-seven (47) north, range one (1) west, to the range line between township forty-seven (47), north range one (1) west, and township forty-seven (47) north, range two (2) west; thence along said last-mentioned range line to the northeast corner of section twenty-four (24), township forty-seven (47) north, range two (2) west; thence continuing west along the north boundary lines of sections twenty-four (24), twenty-three (23), twenty-two (22) to the northwest corner of section twenty-two (22), township forty-seven (47) north, range two (2) west; thence south along the west line of section twenty-two (22), township forty-seven (47) north, range two (2) west, to the northwest corner of section twenty-seven (27), township forty-seven (47) north, range two (2) west; thence west along the north line of sections twenty-eight (28) and twenty-nine (29),



township forty-seven (47) north, range two (2) west, to the northwest corner of section twenty-nine (29), township forty-seven (47) north, range two (2) west; thence south along the west line of sections twenty-nine (29) and thirty-two (32), township forty-seven (47) north, range two (2) west, to the southwest corner of section thirty-two (32), township forty-seven (47) north, range two (2) west; thence west along the township line between townships forty-six (46) and forty-seven (47) north, range two (2) west, to the intersection of the range line between ranges two (2) and three (3) west; thence continuing west along the township line between townships forty-six (46) and forty-seven (47) north, range three (3) west, to the southwest corner of section thirty-three (33), township forty-seven (47) north, range three (3) west; thence north along the west line of section thirty-three (33), township forty-seven (47) north, range three (3) west, to the northwest corner of section thirty-three (33), township forty-seven (47) north, range three (3) west; thence west along the north line of sections thirty-two (32) and thirty-one (31), township forty-seven (47) north, range three (3) west, to the range line between ranges three (3) and four (4) west; thence south along the said range line to the northeast corner of section thirty-six (36), township forty-seven (47) north, range four (4) west; thence west along the north line of sections thirty-six (36) and thirty-five (35), township forty-seven (47) north, range four (4) west, to the northwest corner of section thirty-five (35), township forty-seven (47) north, range four (4) west; thence south along the west line of said section thirty-five (35), township forty-seven (47) north, range four (4) west, to the southwest corner of said section thirty-five (35), township forty-seven (47) north, range four (4) west; thence west along the north line of township forty-six (46) north, ranges four (4), five (5), and six (6) west, to the point of beginning.

County seat — St. Maries. [Compiled and reen. C.L. 3:7; C.S., § 11; I.C.A., § 30-107.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Kootenai county and county seat located at St. Maries by act approved Jan. 23, 1915, S.L. 1915, ch. 4, p. 5.

S.L. 1949, ch. 92 authorized the electors residing in a certain described territory to

determine whether such territory should be detached from Kootenai county and added to Benewah county. The election was never held and a writ of mandate was refused by the district court.

**31-108. Bingham county.** — Bingham county is described as follows: beginning at the northwest corner of section thirty-one (31), township six (6) south, range thirty (30) east:

Southern boundary. Thence east along the section line between sections thirty-one (31) and thirty (30), township and range aforesaid, and an extension thereof to the point where such extended line intersects with the center of the west channel of Snake river; thence up the center of the west channel of Snake river and the center of the main channel of Snake river to the intersection of the township line between townships four (4) and five (5) south; thence east along the said township line between townships four (4)

and five (5) south to the southwest corner of township four (4) south, range forty-two (42) east;

Eastern boundary. Thence north along the range line between ranges forty-one (41) and forty-two (42) east to the southeast corner of township one (1) south, range forty-one (41) east;

Northern boundary. Thence west along the township line between township one (1) and township two (2) south, to the southwest corner of township one (1) south, range forty (40) east; thence north along the range line to the base line; thence west along the base line to the southwest corner of township one (1) north, range thirty-eight (38) east; thence north along the range line to the northeast corner of section twenty-four (24), township one (1) north, range thirty-seven (37) east; thence west along section lines to the southwest corner of section fifteen (15), township one (1) north, range thirty-seven (37) east; thence north along the section line to the northwest corner of said section fifteen (15), township one (1) north, range thirty-seven (37) east; thence west, following the section lines to the range line between ranges thirty-three (33) and thirty-four (34) east; thence north to the south line of Jefferson county; thence west along the south line of Jefferson county to the southeast corner of township four (4) north, range thirty-one (31) east; thence westerly along said township line seven and eighty-one hundredths (7.81) chains to the closing corner of sections three (3) and four (4), township three (3) north, range thirty-two (32) east, Boise meridian;

Western boundary. Thence south along section lines to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships two (2) and three (3) north, range thirty-two (32) east; thence west along the township line to the corner of townships two (2) and three (3) north, ranges thirty (30) and thirty-one (31) east, Boise meridian; thence south along the range line to the corner of township two (2) north, ranges thirty (30) and thirty-one (31) east, Boise meridian; thence west along the township line to the closing corner of sections three (3) and four (4), township one (1) north, range thirty (30) east; thence south along the section lines to the standard corner of sections thirty-three (33) and thirty-four (34), township one (1) north, range thirty (30) east; thence west to closing corner of sections three (3) and four (4), township one (1) south, range thirty (30) east; thence south along section lines to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships one (1) and two (2) south, range thirty (30) east; thence west along said township line to the corner of townships one (1) and two (2) south, ranges twenty-nine (29) and thirty (30) east, Boise meridian; thence south along the range line between townships twenty-nine (29) and thirty (30) east, to place of beginning.

County seat — Blackfoot. [Compiled and reen. C.L. 3:8; C.S., § 12; am. 1921, ch. 210, § 1, p. 420; I.C.A., § 30-108.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created and county seat located at Blackfoot by act approved Jan. 13, 1885, 13 T. Sess. 41; location of boundary line between Lemhi and

Bingham counties provided for, 13 T. Sess. 46, act approved Feb. 5, 1885; supplementary act to act creating Bingham county, 13 T. Sess. 51, approved Feb. 5, 1885; Elmore and Logan



counties created and boundaries of Bingham and Alturas counties defined, 15 T. Sess. 37, act approved Feb. 7, 1889; Fremont county created from 1893, p. 94, act approved Mar. 4, 1893; Bannock county created from, 1893, p. 170, act approved Mar. 6, 1893; provision for voters to determine at next general election whether certain territory of Bingham county should be attached to Fremont county, 1903, p. 222, act approved Mar. 6, 1903; at general election on Nov. 8, 1904, annexation to Fre-

mont county approved and territory annexed, records in office of county recorder; law defining boundaries and locating county seat reen. R. C., § 23d; Bonneville county created from, 1911, ch. 5, p. 8, act approved Feb. 7, 1911; Power county created, including a portion of Bingham county, 1913, ch. 6, p. 30, act approved Jan. 30, 1913; Butte county created, including a portion of Bingham county, 1917, ch. 98, p. 344, act approved Feb. 6, 1917.

**31-109. Blaine county.** — Blaine county is described as follows: beginning at the southeast corner of township two (2) south, range seventeen (17) east, thence east along the township line between townships two (2) and three (3) south, to the intersection of the same with the line between ranges twenty-five (25) and twenty-six (26) east; thence south along the said range line to the middle of the channel of Snake river; thence up the center of the said channel of Snake river to the point of intersection with the range line between ranges twenty-seven (27) and twenty-eight (28) east; thence north along and upon said range line to the northwest corner of township nine (9) south, range twenty-eight (28) east; thence east upon and along the north line of said township nine (9) south, to the northeast corner of section four (4), township nine (9) south, range twenty-eight (28) east; thence in a northerly direction along and upon the section line which when surveyed will be between sections thirty-three (33) and thirty-four (34), township eight (8) south, range twenty-eight (28) east; and an extension of such line to the point where such extended line will intersect with the township line which when surveyed will be the township line between townships seven (7) and eight (8) south, range twenty-eight (28) east; thence west upon the township line to a point which when surveyed will be the southwest corner of township seven (7) south, range twenty-eight (28) east; thence north along and upon the range line which when surveyed will be the range line between ranges twenty-seven (27) and twenty-eight (28) east to a point which when surveyed and established will be the northwest corner of township four (4) south, range twenty-eight (28) east; thence east along and upon the north line of said township four (4) south to the northeast corner of township four (4) south, range twenty-nine (29) east; thence north along the range line between townships twenty-nine (29) and thirty (30) east, to the northeast corner of township two (2) south, range twenty-nine (29) east, thence west to what will be, when surveyed, the southwest corner of township one (1) south, range twenty-seven (27) east; thence north to what will be, when surveyed, the southwest corner of township one (1) north, range twenty-seven (27) east; thence west to the southeast corner of section thirty-one (31) in township one (1) north, range twenty-four (24) east; thence north to the summit of the range of mountains dividing the headwaters of Fish creek, Cottonwood creek and Copper creek from the waters of Lava creek, Champagne creek and Antelope creek; thence northwesterly along the summit of said range of mountains to the southern boundary line of Custer county; thence westerly along and upon the summit of the range of mountains dividing the headwaters of the East Fork of the Salmon river

from the waters of the Little and Big Wood rivers and continuing westerly on the said divide between the East Fork of the Salmon and Wood rivers to the intersection of the longitude line of longitude one hundred fourteen (114) degrees, forty (40) minutes west from Greenwich; thence north on said longitude line to a point on said divide due east of the northeast corner of section twenty-four (24), township seven (7) north, range fourteen (14) east; thence due west to the northeast corner of section twenty-four (24), township seven (7) north, range fourteen (14) east; thence west along and upon the section lines to the corner of sections fifteen (15), sixteen (16), twenty-one (21) and twenty-two (22), township seven (7) north, range fourteen (14) east; thence north along and upon the section lines to the corner of sections three (3) and four (4) and thirty-three (33) and thirty-four (34), township seven (7) and eight (8) north, range fourteen (14) east; thence north along and upon the section lines to the one-quarter (1/4) section corner between sections twenty-seven (27) and twenty-eight (28), township eight (8) north, range fourteen (14) east; thence west along and upon the one-quarter (1/4) section lines to the west one-quarter (1/4) section corner of section thirty (30), township eight (8) north, range fourteen (14) east; thence southwesterly along and upon the summit of the mountains dividing the waters of Yellow Belly lake and Pettit lake to the summit of the Sawtooth mountains; thence following the summit of the said mountains to where the trail crosses the summit of what is known as Mattingly creek divide on the boundary line of Camas county; thence southeasterly along the boundary line of Camas county to the place of beginning.

County seat — Hailey. [Compiled and reen. C.L. 3:9; C.S., § 13; am. 1921, ch. 210, § 2, p. 420; am. 1925, ch. 189, § 1, p. 345; I.C.A., § 30-109.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from the counties of Alturas and Logan, which counties were by same act abolished, and county seat located at the town of Hailey, by act approved Mar. 5, 1895, S.L. 1895, p. 31; see act creating Custer county, 1915 T. Sess. 26, approved Feb. 4, 1889, and act creating Elmore and Logan counties, and defining boundaries of Bingham and Alturas counties, 15 T. Sess. 37, act approved Feb. 7, 1889; provision for voters to determine at next general election whether certain territory of Blaine county should be annexed to Custer county, 1895, p. 140, act approved Mar. 9, 1895; at general election, Nov. 2, 1896, this question as to annexation was for some reason not voted upon; Lincoln county created, including a portion of, 1898, p. 170, act ap-

proved Mar. 18, 1895; boundaries of Lemhi county defined, 1899, p. 111, act approved Feb. 6, 1899, provision for voters to determine at next general election whether certain territory of Blaine county shall be annexed to Custer county, 1899, p. 271, act approved Feb. 14, 1899; at general election, held Nov. 6, 1900, annexation to Custer county was not approved, records in office of county recorder of Custer county; law defining boundaries and locating county seat reen. R.C. § 23e; Power county created, including a portion of, 1913, ch. 6, p. 30, act approved Jan. 30, 1913; Camas county created from act approved Feb. 6, 1917, S.L. 1917, ch. 97, p. 329; Butte county created, including a portion of, act approved Feb. 6, 1917, S.L. 1917, ch. 98, p. 344.

#### JUDICIAL DECISIONS

**Cited in:** Blaine County v. Butte County, 45 Idaho 193, 261 P. 338 (1927).



**31-110. Boise county.** — Boise county is described as follows: beginning at the confluence of Mores creek with the Boise river, at the center of the channel of Boise river;

Western boundary. Thence north forty-four (44) degrees and thirty-eight (38) minutes west (R.C., section 23f), until the said line intersects the north line of township five (5) north; thence east along the north boundary of township five (5) north to the northeast corner of township five (5) north, range one (1) east; thence north twenty-four (24) miles to the northeast corner of township nine (9) north, range one (1) east;

Northern boundary. Thence east (1915, ch. 165, section 2, p. 363) along the second (2) standard parallel north, to the center of the North Fork of the Payette river; thence northerly along the river to the intersection with the line between townships ten (10) and eleven (11) north; thence east to the ridge dividing the waters of the Salmon and Payette rivers (1917, ch. 99, section 2, p. 361); thence in an easterly direction along the divide which separates the waters of the Payette river and its tributaries from the waters of Salmon river and its tributaries (Special and Local Laws, 120), to the head of the Middle Fork of Salmon river;

Eastern boundary. Thence southerly along the divide which separates the water flowing into the South Payette river and Bear Valley creek from that flowing into the main Salmon river and Cape Horn creek to the summit of the Sawtooth mountains; thence southerly along the summit of the Sawtooth mountains (15 Ter. Ses. 26) to the headwaters of the North Fork of Boise river;

Southern boundary. Thence down the center of the channel of the North Fork of Boise river and the main Boise river to the place of beginning (3 Ter. Ses. 214).

County seat—Idaho City. [Compiled and reen. C.L. 3:10; C.S., § 14; I.C.A., § 30-110; am. 2004, ch. 246, § 1, p. 712.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created by act approved Feb. 4, 1864, 1 T. Sess. 628; boundary between Boise and Alturas counties redefined, 3 T. Sess. 214, act approved Jan. 12, 1866; boundary between Boise, Ada, and Idaho counties redefined, 4 T. Sess. 124, act approved Jan. 10, 1867; boundary between Idaho and Boise counties redefined, 7 T. Sess. 64, act approved Jan. 10, 1873; boundary between Ada and Boise counties redefined, 12 T. Sess. 67, act approved Jan. 31, 1883 (field

notes in county recorder's office); boundary of Washington county redefined, 1905, p. 303, approved Feb. 27, 1905; law defining boundaries and locating county seat, reen. R.C., § 23f; Gem county created, including a portion of Boise county, 1915, ch. 165, p. 362; Valley county created, including a portion of Boise county, 1917, ch. 99, p. 360; correct boundary dispute with Ada county, 2004, ch. 246, § 1.

**31-111. Bonner county.** — Bonner county is described as follows: beginning at a point where the township line between townships fifty-three (53) and fifty-four (54) north intersects the boundary line between the state of Idaho and the state of Washington;

Southern boundary. Thence east on said township line between townships fifty-three (53) and fifty-four (54) north, to the northeast corner of township fifty-three (53) north, range three (3) west; thence north on the range line

between sections thirty-six (36) and thirty-one (31), to the northeast corner of section thirty-six (36), township fifty-four (54) north, range three (3) west; thence east six (6) miles to the northeast corner of section thirty-six (36), township fifty-four (54) north, range two (2) west; thence south along the range line between ranges one (1) and two (2) west, to the southwest corner of township fifty-three (53) north, range one (1) west; thence east on the township line between townships fifty-two (52) and fifty-three (53) north, to the present county line between Kootenai and Shoshone counties; thence north along the west boundary line of Shoshone county to the northwest corner thereof; thence in an easterly direction along the summit of the Coeur d'Alene range of mountains to the west line of the state of Montana;

Eastern boundary. Thence north along the boundary line between the state of Idaho and the state of Montana (R. C., § 23g) to a point where the south line of township sixty (60) north of range three (3) east intersects the boundary line between the state of Idaho and the state of Montana;

Northern boundary. Thence west along said south line of township sixty (60) through ranges three (3), two (2), and one (1) east, and ranges one (1), two (2), and three (3) west, to the southwest corner of township sixty (60) north, range three (3) west; thence north along the range line between ranges three (3) and four (4) west, to the point where the north line of township sixty-three (63) north, intersects the range line between ranges three (3) and four (4) west; thence west along the said north line of township sixty-three (63) north, ranges four (4) and five (5) west, to a point on the state line between the states of Idaho and Washington where the same is intersected by the said north line of township sixty-three (63) north, range five (5) west (1915, ch. 7, § 2, p. 21);

Western boundary. Thence south along the boundary line between the state of Idaho and the state of Washington to the place of beginning (R. C., § 23g).

County seat — Sandpoint. [Compiled and reen. C.L. 3:11; C.S., § 15; I.C.A., § 30-111.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Kootenai county and temporary county seat located at Sandpoint, act approved Feb. 21, 1907, in effect Mar. 18, 1907, p. 47; at general election, Nov. 3, 1908, permanent county seat located at Sandpoint, records in office of county recorder; law defining boundaries and locating county seat, reen. R.C., § 23g;

Boundary county created from, act approved Jan. 23, 1915, S.L. 1915, ch. 7, p. 21. "South-west corner of township fifty-three (53) north, range one (1) west" substituted in Compiled Laws for "northeast corner of township 52 north, range 2 west, B.M.", found in R.C., § 23g, lines 11 and 12, to correct obvious error.

**31-112. Bonneville county.** — Bonneville county is described as follows: beginning at the northeast corner of Bannock county;

Southern boundary. Thence west along the north line of Bannock county to the southwest corner of township four (4) south, range forty-two (42) east; thence north along the range line between ranges forty-one (41) and forty-two (42) east, to the southeast corner of township one (1) south, range forty-one (41) east; thence west along the township line between township

one (1) and township two (2) south, to the southwest corner of township one (1) south, range forty (40) east; thence north along the range line to the base line; thence west along the base line to the southwest corner of township one (1) north, range thirty-eight (38) east; thence north along the range line to the northeast corner of section twenty-four (24), township one (1) north, range thirty-seven (37) east; thence west along section lines to the southwest corner of section fifteen (15), township one (1) north, range thirty-seven (37) east; thence north along the section line to the northwest corner of said section fifteen (15), township one (1) north, range thirty-seven (37) east; thence west, following the section lines to the range line between ranges thirty-three (33) and thirty-four (34) east;

Western boundary. Thence north (1911, ch. 5, § 2, pp. 8, 9) to the line between townships three (3) and four (4) north;

Northern boundary. Thence east along the said township line between townships three (3) and four (4) north (1893, p. 94), to a point where the said line bisects the top or comb of the Big Hole mountain range; thence following along the top or comb of the said mountains in a southeasterly direction (R. C., § 23l ) to the west line of the state of Wyoming;

Eastern boundary. Thence south along the west line of the state of Wyoming to the point of beginning (1911, ch. 5, § 2, p. 9).

County seat — Idaho Falls. [Compiled and reen. C.L. 3:12; C.S., § 16; I.C.A., § 30-112.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Idaho Falls, 1911, ch. 5, p. 8 act approved Feb. Bingham county and county seat located at 7, 1911.

**31-113. Boundary county.** — Boundary county is described as follows: beginning at a point on the state line between the states of Idaho and Washington where the same is intersected by the north line of township sixty-three (63) north, range five (5) west;

Southern boundary. Thence east along the said north line of township sixty-three (63) north, ranges five (5) and four (4) west, to the range line between ranges three (3) and four (4) west; thence south along said range line to the southwest corner of township sixty (60) north, range three (3) west; thence east along said south line of township sixty (60) through ranges three (3), two (2) and one (1) west, and ranges one (1), two (2) and three (3) east, to the state line between the state of Idaho and Montana;

Eastern boundary. Thence north along said state line to the international boundary line between the United States and the Dominion of Canada;

Northern boundary. Thence west along said international boundary to its junction with the state line between the states of Idaho and Washington;

Western boundary. Thence south along said state line to the point of beginning.

County seat — Bonners Ferry. [Compiled and reen. C.L. 3:13; C.S., § 17; I.C.A., § 30-113.]



## STATUTORY NOTES

**Compiler's Notes.** — County created from Bonners Ferry by act approved Jan. 23, 1915, Bonner county and county seat located at S.L. 1915, ch. 7, p. 21.

**31-114. Butte county.** — Butte county is described as follows: beginning at the point, which, when surveyed, will be the southeast corner of section thirty-one (31), township one (1) north, range twenty-four (24) east;

Western boundary. Thence north to the summit of the range of mountains dividing the headwaters of Fish creek, Cottonwood creek and Copper creek from the waters of Lava creek, Champagne creek and Antelope creek; thence northwesterly along the summit of said range of mountains to the present boundary line between Blaine and Custer counties; thence in a northerly direction along and upon the boundary line of Custer county to the point of intersection with the southern boundary line of Lemhi county;

Northern boundary. Thence east along southern boundary line of Lemhi county and township line between townships ten (10) and eleven (11) north to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships ten (10) and eleven (11) north, range twenty-nine (29) east on western boundary line of Clark county; thence south along the section lines and western boundary line of Clark county, to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships seven (7) and eight (8) north, range twenty-nine (29) east, the southwest corner of Clark county; thence east along the southern boundary line of Clark county and township line between townships seven (7) and eight (8) north, to the corner of townships seven (7) and eight (8) north, ranges thirty-one (31) and thirty-two (32) east on west boundary of Jefferson county;

Eastern boundary. Thence south along range line between ranges thirty-one (31) and thirty-two (32) east, and western boundary line of Jefferson county, to the southeast corner of township four (4) north, range thirty-one (31) east, Boise meridian; thence westerly along the township line seven and eighty-one hundredth (7.81) chains to the closing corner of sections three (3) and four (4), township three (3) north, range thirty-two (32) east, Boise meridian; thence south along section lines to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships twenty-two (22) and three (3) north, range thirty-two (32) east, on the western boundary of Bingham county; thence west along the township line and western boundary line of Bingham county to the corner of townships two (2) and three (3) north, ranges thirty (30) and thirty-one (31) east, Boise meridian; thence south along the range line and western boundary line of Bingham county to the corner of township two (2) north, ranges thirty (30) and thirty-one (31) east, Boise meridian; thence west along the township line and western boundary line of Bingham county to the closing corner of sections three (3) and four (4), township one (1) north, range thirty (30) east; thence south along the section lines and western boundary line of Bingham county to the standard corner of sections thirty-three (33) and thirty-four (34), township one (1) north, range thirty (30) east; thence west to closing corner of sections three (3) and four (4), township one (1) south, range thirty (30) east; thence south along section lines and western boundary line of Bingham county to



the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships one (1) and two (2) south, range thirty (30) east;

Southern boundary. Thence west along township line and boundary line of Bingham and Blaine counties to what will be, when surveyed, the southwest corner of township one (1) south, range twenty-seven (27) east, Boise meridian; thence north along the boundary line of Blaine county and what will be, when surveyed, the west boundary of township one (1) south, range twenty-seven (27) east, Boise meridian, to what will be, when surveyed, the northwest corner of township one (1) south, range twenty-seven (27) east, Boise meridian; thence west along the Base line and boundary line of Blaine county to the southeast corner of section thirty-one (31), township one (1) north, range twenty-four (24) east, Boise meridian, to place of beginning. [Compiled and reen. C.L. 3:14; C.S., § 18; am. 1921, ch. 204, § 1, p. 411; I.C.A., § 30-114.]

### STATUTORY NOTES

**Compiler's Notes.** — County created from parts of Blaine, Jefferson, and Bingham counties and temporary county seat located at Arco, location of permanent county seat to be decided upon at general election in 1918, 1917, ch. 98, p. 344, act approved Feb. 6, 1917.

By S.L. 1931, ch. 63, the electors residing in the following described territory were authorized to vote, at the general election in November, 1932, on the question of whether such territory should be detached from Custer county and added to Butte county:

"Beginning at the southeast corner of Custer county where the boundary line of said county intersects the boundary line of Butte and Blaine counties on the divide which separates the waters of Antelope creek and Little Wood river; thence running westerly along and upon the summit of the range of mountains dividing the headwaters of the Big Lost river from the waters of the Little and Big

Wood rivers to where said divide is intersected by the divide of that range of mountains which separates the waters of the East Fork of Salmon river from Big Lost river water shed; thence in a northeasterly direction along and upon the summit of the range of mountains dividing the waters of the East Fork of Salmon river and Salmon river from the Big Lost river water shed and continuing southeasterly along and upon said divide between the Pahsimeroi river, a tributary of the said Salmon river, and the Big Lost river water shed, and continuing in a northeasterly direction on the said divide between the water shed of Pahsimeroi river and the water shed of Little Lost river to the intersection of said divide with the boundary line of Lemhi county; thence in a southerly direction on the boundary line between Lemhi, Butte, and Custer counties to the place of beginning."

The records do not disclose that the election was ever held.

### JUDICIAL DECISIONS

**Cited in:** Blaine County v. Butte County, 45 Idaho 193, 261 P. 338 (1927).

**31-115. Camas county.** — Camas county is described as follows: beginning at the southwest corner of township two (2) south, range twelve (12) east;

Southern boundary. Thence due east along the township line between townships two (2) and three (3) south, to the southeast corner of township two (2) south, range seventeen (17) east;

Eastern boundary. Thence north along the township line between ranges seventeen (17) and eighteen (18) east, to the southeast corner of section twelve (12), township two (2) south, range seventeen (17) east; thence west one (1) mile, to the southwest corner of section twelve (12), township two (2)

south, range seventeen (17) east; thence north along the section line to the intersection of said line and the center of the channel of Big Wood river; thence westerly along said Big Wood river to the junction of Big Wood river and Malad river (or Camas creek); thence westerly along the center of the channel of Malad river (or Camas creek) to the intersection of said river and the section line between sections fourteen (14) and fifteen (15), township one (1) south, range sixteen (16) east; thence north along said section line to the township line between township one (1) south, range sixteen (16) east, and township one (1) north, range sixteen (16) east; thence east along said township line to the southeast corner of section thirty-four (34), township one (1) north, range sixteen (16) east; thence north along the section line two (2) miles to the northeast corner of section twenty-seven (27), township one (1) north, range sixteen (16) east; thence west along the section line one (1) mile to the northwest corner of section twenty-seven (27), township one (1) north, range sixteen (16) east; thence northerly along the section line to the main divide between Beaver creek on the west and Camp creek on the east; continuing thence northerly along the summit of the said mountain range or watershed between Beaver creek and Camp creek to its junction with the summit of the mountain range or watershed dividing Willow creek and its tributaries on the west and Big Wood river and its tributaries on the east; thence continuing northerly and westerly along the said last-mentioned summit across Buttercup mountain to a point which is approximately five (5) miles northwest of Buttercup mountain and two (2) miles south of the U.S.G.S. bench mark elevation 7281, on Warm Spring creek, which point is marked "Elevation 8588" on U.S.G.S. topographical map of Idaho Sawtooth quadrangle, edition of January, 1900, reprinted February, 1909; thence continuing along the summit about north thirty-five (35) degrees west to a point designated on said map of said quadrangle as "Elevation 8492"; thence westerly along said summit to a point marked "Elevation 9310" on said map; thence northerly along the summit of the Smoky mountains forming the summit of the watershed dividing the Boise river and its tributaries on the west, the Big Wood river and its tributaries on the east to its intersection with the summit of the Sawtooth mountains at a point marked "Elevation 10,000" on said map, where the said summit of the Sawtooth mountains forms a watershed dividing the Boise river and its tributaries on the west and south, the Salmon river and its tributaries on the west and north, and Big Wood river and its tributaries on the east;

Northern boundary. Thence westerly along the summit of the Sawtooth mountains, where it forms a watershed between the Boise river and its tributaries on the south, and the Salmon river and its tributaries on the north to its intersection with the eastern boundary of Elmore county at a point where the trail crosses the summit of what is known as Mattingly Creek divide;

Western boundary. Thence in a southerly direction along the main divide between the middle fork and the south fork of the Boise river to a point on the divide between Willow creek and Bear creek; thence in a southerly direction on the main divide between Willow creek and Skeleton creek to the center of the channel of the south fork of the Boise river; thence down the

channel of the river to the point of intersection with the range line between ranges eleven (11) and twelve (12) east, approximately in township three (3) north; thence south along the range line between ranges eleven (11) and twelve (12) to the township line between townships two (2) and three (3) south, the point of beginning.

County seat — Fairfield. [Compiled and reen. C.L. 3:15; C.S., § 19; I.C.A., § 30-115; am. 1985, ch. 112, § 1, p. 218.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Blaine county and county seat located at Fairfield by act approved Feb. 6, 1917, S.L. 1917, ch. 97, p. 329.

**Effective Dates.** — Section 2 of S.L. 1985, ch. 112 declared an emergency. Approved March 13, 1985.

**31-116. Canyon county.** — Canyon county is described as follows: beginning at a point in the middle of the channel of Snake river, where the line between township one (1) south, range one (1) west, and township one (1) south, range two (2) west, crosses said river;

Eastern boundary. Thence north to the northwest corner of township one (1) north, range one (1) west; thence east to the southeast corner of section thirty-two (32), township two (2) north, range one (1) west; thence north to the northwest corner of section four (4), township three (3) north, range one (1) west; thence west to the northwest corner of township three (3) north, range one (1) west; thence north to the northwest corner of township five (5) north, range one (1) west (R. C., § 23h);

Northern boundary. Thence west on the township line between townships five (5) and six (6), to the southwest corner of section thirty-one (31), township six (6) north, range three (3) west (1915, ch. 165, § 2, p. 363; 1917, ch. 11, § 2, p. 15); thence south on range line between ranges three (3) and four (4), one-half (½) mile to the east quarter corner of section one (1), township five (5) north, range four (4) west; thence west along the center line of sections one (1) and two (2), said township and range, two (2) miles to the east quarter corner of section three (3), said township and range; thence south along the section line one-half (½) mile to the southeast corner of section three (3), said township and range; thence west along the section line three (3) miles to the southwest corner of section five (5), said township and range; thence north along the section line one (1) mile to the northwest corner of section five (5), said township and range; thence west along the township line between townships five (5) and six (6) north, two (2) miles to the southwest corner of section thirty-six (36), township six (6) north, range five (5) west; thence north along the section line one (1) mile to the northwest corner of section thirty-six (36), said township and range; thence west along the section line one (1) mile to the southwest corner of section twenty-six (26), said township and range; thence north along the section line one (1) mile to the southwest corner of section twenty-three (23), said township and range; thence west along the section line two (2) miles to the southwest corner of section twenty-one (21), said township and range; thence north along the section line three (3) miles to the northwest corner of



section nine (9), said township and range; thence west along the section line one and one-half ( $1\frac{1}{2}$ ) miles, more or less, to an intersection with the west line of the state of Idaho (1917, ch. 11, § 2, p. 15);

Western boundary. Thence up the middle of the channel of Snake river to the boundary line between Idaho and Oregon; thence south along the boundary line between Idaho and Oregon to the middle of Snake river;

Southern boundary. Thence up the middle of the channel of Snake river to the place of beginning (R. C., § 23h).

County seat — Caldwell. [Compiled and reen. C.L. 3:16; C.S., § 20; I.C.A., § 30-116.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created and county seat temporarily located at Caldwell, 1890-1891, p. 155, act approved Mar. 7, 1891; at general election in 1894, permanent county seat located at Caldwell; see act defining boundary between Ada and Boise counties, 12 T. Sess. 67, approved Jan. 31, 1883; boundary of Washington county redefined, 1905, p. 303, act approved Feb. 27, 1905; law defining

boundaries and locating county seat reen. R.C., § 23h; Gem county created, including a portion of Canyon county (enabling act), act approved Mar. 19, 1915, S.L. 1915, ch. 165, p. 362; creation of county approved by voters at special election, May 11, 1915; Payette county created from (enabling act), 1917, ch. 11, p. 13; creation of county approved by voters at special election, May 11, 1917.

**31-117. Caribou county.** — Caribou county is described as follows: commencing at the northwest corner of township five (5) south, range thirty-nine (39) east of Boise meridian;

Northern boundary. Thence east along the township line between townships four (4) and five (5) south, Boise meridian, to the northeast corner of township five (5) south, range forty-six (46) east, Boise meridian, or to the Wyoming and Idaho state line;

Eastern boundary. Thence south along the Idaho and Wyoming state line to the corner of Bear Lake and Bannock counties;

Southern boundary. Thence in a westerly direction along the line between Bear Lake and Bannock counties to the southwest corner of township nine (9) south, range forty-two (42) east, Boise meridian; thence west along township line between nine (9) and ten (10) south, range forty-one (41) east, to the southwest corner of section thirty-two (32), township nine (9) south, range forty-one (41) east, Boise meridian;

Western boundary. Thence north three (3) miles along section line to the northwest corner of section twenty (20), township nine (9) south, range forty-one (41) east, thence west one (1) mile to the southwest corner of section eighteen (18), township nine (9) south, range forty-one (41) east; thence north nine (9) miles to the northwest corner of section six (6), township eight (8) south, range forty-one (41) east, thence west four (4) miles to the southwest corner of section thirty-three (33), township seven (7) south, range forty (40) east; thence north six (6) miles more or less to the northwest corner of section four (4), township seven (7) south, range forty (40) east; thence west along the line of first standard parallel one and one-half ( $1\frac{1}{2}$ ) miles to the southwest corner of section thirty-one (31), township six (6) south, range forty (40) east; thence north six (6) miles to the northwest corner of township six (6) south, range forty (40) east; thence west

six (6) miles to the southwest corner of township five (5) south, range thirty-nine (39) east; thence north six (6) miles to place of beginning.

County seat — Soda Springs. [1919, ch. 5, §§ 2, 5, p. 23; C.S., § 21; I.C.A., § 30-117.]

### STATUTORY NOTES

**Compiler's Notes.** — The remainder of S. L. 1919, ch. 5 is omitted as temporary. Election was held in November, 1920, to decide whether above described territory should be detached from Bannock county and Caribou county organized therefrom, 1919, ch. 5, §§ 24-28, pp. 40, 41. The proposal was defeated at said election.

#### Boundary Changes Affecting Above Section:

*Election of 1948.* S.L. 1947, ch. 247 conferred authority upon the electors residing in the following described territory to vote at the general election to be held in November, 1948, upon the question whether such territory shall be detached from Bannock county and added to Caribou county.

"1) In Township 5 South, Range 37 East, all that part of this Township lying southeasterly of the summit of the Portneuf Mountains, consisting of Sections 25 and 36 and fractional Sections 1, 13, 23, 24, 26, 33, 34, 35.

"2) In Township 5 South, Range 38 East, all that part of this Township lying easterly of the summit of the Portneuf Mountains, Sections 6, 7 and 18 only being fractional.

"3) In Township 6 South, Range 37 East, all that part of this Township lying easterly of the summit of the Portneuf Mountains comprising Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36, and fractional Sections 4, 9, 16, 21, 28 and 33.

"4) All of Township 6 South, Range 38 East.

"5) All of Township 6 South, Range 39 East.

"6) In Township 7 South, Range 37 East all that part of this Township lying easterly of the summit of the Portneuf Mountains comprising Sections 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35 and 36, and fractional Sections 3, 4, 10, 15, 16, 21, 28 and 33.

"7) All of Township 7 South, Range 38 East.

"8) All of Township 7 South, Range 39 East.

"9) In Township 7 South, Range 40 East, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31 and 32.

"10) In Township 8 South, Range 37 East, all that part of this Township on the drainage to Pebble Creek comprising Sections 1, 2, 3, 11, 12, 13, 14 and 23, and fractional Sections 4, 9, 10, 15, 22, 24, 26 and 27.

"11) In Township 8 South, Range 38 East, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 24, and fractional Sections 23, 25, 26 and 36.

"12) All of Township 8 South, Range 39 East.

"13) All of Township 8 South, Range 40 East.

"14) In Township 9 South, Range 39 East, Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 21, 22, 23, 27, 28, 33 and 34, and fractional Sections 1, 12, 13, the North 480 Acres of Section 18, the East 480 Acres of Section 20, fractional Section 24, the East Half of Section 29, the East Half of Section 32 and the West Half of Section 35.

"15) In Township 9 South, Range 40 East, Sections 1, 2, 3, 4, 5, 6, 9 and 10, the North Half of Section 7, the North Half of Section 8, and that part of Section 12 lying northeasterly of the right-of-way of the Union Pacific Railroad.

"Described by metes and bounds as follows:

"Beginning at the Northeast corner of Township 5 South, Range 38 East of the Boise Meridian, thence South along the East boundary of said Township 6 miles to the Southeast corner of said Township 5 South, Range 38 East; thence East along the North boundary of Township 6 South, Range 39 East 6 miles to the Northeast corner of said Township 6 South, Range 39 East; thence South along the East boundary of said Township 6 South, Range 39 East 6 miles to the Southeast corner of said Township 6 South, Range 39 East; thence East along the North boundary of Township 7 South, Range 40 East 1½ miles, more or less, to the Northeast corner of Section 5, Township 7 South, Range 40 East; thence South along the Section Line 6 miles to the Southeast corner of Section 32, Township 7 South, Range 40 East; thence East along the North boundary of Township 8 South, Range 40 East 4 miles to the Northeast corner of said Township 8 South, Range 40 East; thence South along the East boundary of said Township 8 South, Range 40 East 6 miles to the Southeast corner of said Township 8 South, Range 40 East; thence continuing South along the East boundary of Township 9 South, Range 40 East approximately 1¼ miles to the North boundary of the right-of-way of the Union Pacific Railroad; thence northwesterly along the North line of the right-of-way of the Union Pacific Railroad 1¼ miles, more or less, to a point on the West boundary of Section 12; thence North along the West boundary of Section 12, 800 feet, more or less, to the Southeast corner of Section 2; thence West



along the South boundary of Section 2, 1 mile to the corner of Sections 2, 3, 10 and 11; thence South along the East boundary of said Section 10, 1 mile to the corner of Sections 10, 11, 14 and 15; thence West along the South boundary of Sections 10 and 9, 2 miles to the corner of Sections 8, 9, 16 and 17; thence North along the West boundary of Section 9,  $\frac{1}{2}$  mile; thence West through the center of Sections 8 and 7, 2 miles to the Quarter Section corner on the West boundary of Section 7 and on the East boundary of Section 12, Township 9 South, Range 39 East; thence South along the East boundary of said township 9 South, Range 39 East,  $2\frac{1}{2}$  miles, more or less, to the corner of fractional Sections 24 and 25; thence West along the North boundary of fractional Section 25 and Section 26, 1 mile, more or less, to the Quarter Section corner on the North boundary of Section 26; thence South through the center of Sections 26 and 35, 2 miles to the Quarter Section corner on the South boundary of Section 35; thence West along the South boundary of Sections 35, 34, 33 and 32, 3 miles to the Quarter Section corner on the South boundary of said Section 32; thence North through the center of Sections 32 and 29, 2 miles to the Quarter Section corner between Sections 20 and 29; thence West along the South boundary of said Section 20,  $\frac{1}{4}$  mile; thence North through the center of the West Half of said Section 20, 1 mile to a point on the North boundary of said Section 20; thence West along the North boundary of said Section 20,  $\frac{1}{4}$  mile to the corner of Sections 17, 18, 19 and 20; thence North along the West boundary of Section 17,  $\frac{1}{4}$  mile; thence West through the center of the South Half of Section 18, 1 mile to a point on the West boundary of Section 18 and the West boundary of Township 9 South, Range 39 East; thence North along the West boundary of Township 9 South, Range 39 East,  $2\frac{1}{2}$  miles, more or less, to the Northeast corner of Township 9 South, Range 38 East; thence West along the South boundary of Township 8 South, Range 38 East,  $\frac{1}{2}$  mile more or less, to the summit of the Fish Creek Divide; thence north-northwesterly along the summit of the Fish Creek Mountains  $3\frac{1}{4}$  miles, more or less, to a point on the South boundary of Section 14, Township 8 South, Range 38 East; thence West along the South boundary of Sections 14, 15, 16, 17 and 18, Township 8 South, Range 38 East, to a point on the summit on the South watershed of Pebble Creek and on the West boundary of said Township 8 South, Range 38 East; thence southwesterly along the summit of the South watershed of Pebble Creek, 2 miles, more or less, to its junction with the summit of the Portneuf Mountains in Section 26, Township 8 South, Range 37 East; thence northwesterly along the summit of the Portneuf Mountains

through Sections 26, 27, 22, 15, 10, 9, and 4 of Township 8 South, Range 37 East; Sections 33, 28, 21, 16, 15, 10, 3 and 4 of Township 7 South, Range 37 East; Sections 33, 28, 21, 16, 9 and 4 of Township 6 South, Range 37 East; Sections 33, 34, 35, 26, 23, 24 and 13 of Township 5 South, Range 37 East; Sections 18, 7 and 6, Township 5 South, Range 38 East, and Section 1, Township 5 South, Range 37 East to the corner common to Township 5 South, Ranges 37 and 38 East; thence East along the North boundary of Township 5 South, Range 38 East, 6 miles to the point of beginning."

The proposal was voted on at the 1948 general election and was carried.

*Election of 1948.* S.L. 1947, ch. 248 conferred authority upon the electors residing in the following described territory to vote at the general election to be held in November, 1948, upon the question of whether such territory should be detached from Bannock County and added to Caribou County.

"1) In Township 9 South, Range 39 East, the East  $\frac{1}{2}$  of Section 26, the East  $\frac{1}{2}$  of Section 35 and fractional Sections 25 and 36.

"2) In Township 9 South, Range 40 East, Sections 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, the South  $\frac{1}{2}$  of Section 7; the South  $\frac{1}{2}$  of Section 8 and fractional Section 12.

"3) In Township 9 South, Range 41 East, Sections 19, 30 and 31.

"4) In Township 10 South, Range 39 East, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34, 35 and 36 and the North  $\frac{1}{2}$  of Section 28.

"5) In Township 10 South, Range 40 East, entire.

"6) In Township 10 South, Range 41 East, all that part of this township now within Bannock County.

"7) In Township 11 South, Range 39 East, Sections 1, 2, 3, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, the East  $\frac{1}{2}$  of Section 10, the East  $\frac{1}{2}$  of Section 15, and the East  $\frac{1}{2}$  of Section 22.

"8) In Township 11 South, Range 40 East, all that part of this township except that portion of Section 36 lying East of Bear River.

"9) In Township 11 South, Range 41 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36, and fractional Sections 1, 2 and 12, the East  $\frac{1}{2}$  and the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31;

"10) In Township 11 South, Range 42 East, all that part of this township now within Bannock County.

"Described by metes and bounds as follows:

"Beginning at a point on the East boundary of Township 9 South, Range 40 East, Boise-Meridian, on the East boundary of Section 12 and on the North Boundary of the right of way

of the Union Pacific Railroad; thence Northwesterly along the North line of the right of way of the Union Pacific Railroad 1- $\frac{1}{4}$  miles, more or less, to a point on the West boundary of Section 12, and the East boundary of Section 11; thence North along the East boundary of Section 11, 800 feet, more or less, to the Northeast corner of Section 11; thence West along the North boundary of Section 11, 1 mile to the corner of Sections 2, 3, 10 and 11; thence South along the West boundary of Section 11, 1 mile to the corner of Sections 10, 11, 14 and 15; thence West along the North boundary of Sections 15 and 16, 2 miles to the corner of Sections 8, 9, 16 and 17; thence North along the East boundary of Section 8,  $\frac{1}{2}$  mile; thence West through the center of Sections 8 and 7, 2 miles to the  $\frac{1}{4}$  Section Corner on the West boundary of Section 7, Township 9 South, Range 40 East; thence South along the West boundary of said Township 9 South, Range 40 East, 2- $\frac{1}{2}$  miles, more or less, to the corner of fractional Sections 24 and 25, Township 9 South, Range 39 East; thence West along the North boundary of fractional Section 25 and Section 26, 1 mile, more or less, to the  $\frac{1}{4}$  Section Corner on the North boundary of Section 26; thence South through the center of Sections 26 and 35, 2 miles to the  $\frac{1}{4}$  Section Corner on the South boundary of Section 35; thence West along the North boundary of Sections 2, 3 and 4 approximately 3 miles to the Northwest corner of Section 4, Township 10 South, Range 39 East; thence South along the Section Line between Sections 4 and 5, 8 and 9, 16 and 17, 20 and 21, 28 and 29, 4- $\frac{1}{2}$  miles to the  $\frac{1}{4}$  Section Corner between Sections 28 and 29; thence East along the East and West center line of Section 28, 1 mile to the  $\frac{1}{4}$  Section Corner between Sections 27 and 28; thence South along the Section Line between Sections 27 and 28, 33 and 34, 1- $\frac{1}{2}$  miles to the Southwest corner of Section 34, Township 10 South, Range 39 East; thence East along the South boundary of Section 34, Township 10 South, Range 39 East, 300 feet, more or less, to the Northwest corner of Section 3, Township 11 South, Range 39 East; thence South along the Section Line between Sections 3 and 4, 1 mile to the corner of Sections 3, 4, 9 and 10; thence East along the South boundary of Section 3,  $\frac{1}{2}$  mile to the  $\frac{1}{4}$  Section Corner between Sections 3 and 10; thence South through the center of Sections 10, 15 and 22, 3 miles to the

$\frac{1}{4}$  Section corner between Sections 22 and 27; thence East along the South boundary of Section 22,  $\frac{1}{2}$  mile to the corner of Sections 22, 23, 26 and 27; thence South along the Section Line between Sections 26 and 27, 34 and 35, 2 miles to the Southwest corner of Section 35, Township 11 South, Range 39 East; thence East following the South boundary of Township 11 South, Range 39 East and Township 11 South, Range 40 East to an intersection with Bear River on the South boundary of Section 36, Township 11 South, Range 40 East; thence Northerly, following the wanderings of Bear River to a point on the North boundary of Section 36, Township 11 South, Range 40 East; thence East along the South boundary of Section 25, Township 11 South, Range 40 East five-eighths of a mile, more or less, to the corner of Sections 25, 30, 31 and 36, Township 11 South, Range 40 and 41 East; thence East along the South boundary of Section 30, Township 11 South, Range 41 East,  $\frac{1}{4}$  mile to the Northwest corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; thence South  $\frac{1}{4}$  mile to the Southwest corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; thence East  $\frac{1}{4}$  mile to the Southeast corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31; thence South  $\frac{3}{4}$  mile to the  $\frac{1}{4}$  Section Corner on the South boundary of said Section 31; thence East along the South boundary of Township 11 South, Range 41 East and Township 11 South, Range 42 East to a point on the crest of the Bear River Range on the South boundary of Section 31, Township 11 South, Range 42 East; thence North, following the unbroken crest of the Bear River Range to its intersection with the Township Line between Township 9 and 10 South; thence West on the Township Line to the Southwest corner of Section 32, Township 9 South, Range 41 East; thence North along the East boundary of Sections 31, 30 and 19 to the corner of Sections 17, 18, 19 and 20, Township 9 South, Range 41 East; thence West along the North boundary of Section 19, 1 mile to the corner of Sections 13, 18, 19 and 24, Township 9 South, Range 40 and 41 East; thence North along the East boundary of Section 13, and Section 12, Township 9 South, Range 40 East, 1- $\frac{1}{4}$  miles, more or less, to a point on the North boundary of the right of way of the Union Pacific Railroad, the place of beginning."

The proposal was voted on at the 1948 general election and was carried.

**31-118. Cassia county.** — Cassia county is described as follows: beginning with the intersection of the middle of the channel of Snake river with the north and south center line of section twenty-eight (28), township ten (10) south, range twenty-one (21) east;



Western boundary. Thence south on the said center line of said section twenty-eight (28), to the point of intersection of the north line of the right of way of the Minidoka & Southwestern Railroad Company, which point is one hundred (100) feet distant at right angles from the center of the main track of the line of road of said railroad company as the same is now located; thence in a southwesterly direction along the north line of said railroad right of way to a point where said line intersects the south line of the canal right of way of the Twin Falls Land & Water Company, which point of intersection is one hundred (100) feet distant at right angles from the center line of the main canal of the said Twin Falls Land & Water Company; thence south to the south line of section thirty-six (36), township ten (10) south, range twenty (20) east; thence west to the southwest corner of said section thirty-six (36); thence south on the section lines to the south line of township eleven (11) south, thence west to the southeast corner of township eleven (11) south, range eighteen (18) east; thence south on the range lines to the south line of the state of Idaho (1907, p. 40);

Southern boundary. Thence east along the south boundary line of the state of Idaho to the intersection of the same with the one hundred thirteenth (113th) meridian west from Greenwich;

Eastern boundary. Thence north along the said meridian to the intersection of the same with the (R.C., section 23i) southern line of township twelve (12) south; thence west upon and along the southern line of said township twelve (12), to the southwest corner of township twelve (12) south, range thirty (30) east; thence north upon the range line between ranges twenty-nine (29) and thirty (30) east, to the southwest corner of township nine (9) south, range thirty (30) east;

Northern boundary. Thence west along and upon the south line of township nine (9) south, to the southwest corner of section thirty-four (34), township nine (9) south, range twenty-eight (28) east; thence north upon and along the line between sections thirty-three (33) and thirty-four (34), township nine (9) south, range twenty-eight (28) east, and an extension thereof to the point where said line so extended intersects the center of the main channel of Snake river (1913, ch. 6, section 2, p. 32); thence down the said river in a southwesterly direction to the point of beginning (R.C., section 23i).

County seat — Burley. [Compiled and reen. C.L. 3:17; C.S., § 22; I.C.A., § 30-118; am. 1989, ch. 9, § 1, p. 10.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Owyhee county and county commissioners authorized to select temporary county seat, act approved Feb. 20, 1879, 10 T. Sess. 43; section defining boundaries amended, in effect Feb. 9, 1881, 11 T. Sess. 339; Twin Falls

county created from, 1897, p. 40, act approved Feb. 24, 1907; law defining boundaries and locating county seat reen. R.C., § 23i; Power county created, including a portion of, 1913, ch. 6, p. 30.

**31-119. Clark county.** — Clark county is described as follows: beginning at a point on the Idaho-Montana state line directly north of the point where the east line of section four (4), township thirteen (13) north, range

forty-one (41) east, Boise meridian, intersects the north line of said township thirteen (13) north;

Eastern boundary. Thence south to the southeast corner of section thirty-three (33), township thirteen (13) north, range forty-one (41) east, Boise meridian; thence west along the south line of said township thirteen (13) to the southwest corner of section thirty-one (31), township thirteen (13) north, range forty (40) east, Boise meridian; thence south along the range line between range thirty-nine (39) east, Boise meridian, and range forty (40) east, Boise meridian, to its intersection with the south line of township twelve (12) north; thence west along the south line of said township twelve (12) north, to the southeast corner of section thirty-three (33), township twelve (12) north, range thirty-nine (39) east, Boise meridian; thence south to what will be, when surveyed, the southeast corner of section sixteen (16), township ten (10) north, range thirty-nine (39) east, Boise meridian; thence west to the southeast corner of section thirteen (13), township ten (10) north, range thirty-eight (38) east, Boise meridian; thence south along the range line between range thirty-eight (38) east, Boise meridian, and range thirty-nine (39) east, Boise meridian, to its intersection with the south line of township ten (10) north; thence west along the said south line of township ten (10) north, to its intersection with the range line between range thirty-seven (37) east, Boise meridian, and thirty-eight (38) east, Boise meridian; thence south along said range line to its intersection with the south line of township nine (9) north;

Southern boundary. Thence west along south line of said township nine (9), to its intersection with the range line between range thirty-one (31) east, Boise meridian, and range thirty-two (32) east, Boise meridian; thence south along said range line to its intersection with the south line of township eight (8) north; thence west along said township line to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), townships seven (7) and eight (8) north, range twenty-nine (29) east, the eastern boundary line of Butte county;

Western boundary. Thence north along the section line and the eastern boundary line of Butte county to the corner of sections three (3), four (4), thirty-three (33) and thirty-four (34), township ten (10) and eleven (11) north, range twenty-nine (29) east; thence east along said township line to its intersection with the range line between range thirty (30) east, Boise meridian, and range thirty-one (31) east, Boise meridian, being the southeast corner of Lemhi county; thence north along said range line to the Idaho-Montana state line;

Northern boundary. Thence easterly along said state line to the point of beginning.

County seat — Dubois. [1919, ch. 3, §§ 2, 5, p. 4; C.S., § 23; 1921, ch. 194, § 1, p. 395; I.C.A., § 30-119.]

**31-120. Clearwater county.** — Clearwater county is described as follows: beginning at the mouth of Lolo creek;

Southern boundary. Thence in a northeasterly direction up the middle of the channel to the head of said Lolo creek; thence northeasterly in a direct



line to a point where the Montana-Idaho state line intersects the Lolo pass at the summit of the Bitter Root mountains;

Eastern boundary. Thence in a northwesterly direction along said Montana-Idaho state line to the intersection of the same with the northern boundary of township forty-one (41) north;

Northern boundary. Thence west along said northern boundary line to a point directly north of the mouth of the North Fork of Clearwater river;

Western boundary. Thence south to a point of intersection with the middle line of township thirty-eight (38) north; thence west along said middle line of township thirty-eight (38) north, to the northwest corner of section twenty-two (22), township thirty-eight (38) north, range one (1) west; thence south to the north boundary line of the Nez Perce Indian reservation; thence easterly along said reservation line to the intersection of the same with the line running south between sections fifteen (15) and sixteen (16), township thirty-seven (37) north, range one (1) west; thence south on the said line between sections fifteen (15) and sixteen (16) to the middle of the channel of Clearwater river; thence up the middle of the channel of said Clearwater river to a point where the same is intersected by the section line between sections five (5) and six (6), township thirty-six (36) north, range one (1) east; thence south on the section line between said sections five (5) and six (6) to the middle of the channel of Little Canyon creek; thence up the middle of the channel of Little Canyon creek to a point where the same intersects the seventh (7th) standard parallel north; thence east along said parallel to the middle of the channel of Clearwater river; thence up the middle of the channel of said Clearwater river to the point of beginning.

County seat — Orofino. [Compiled and reen. C.L. 3:18; C.S., § 24; I.C.A., § 30-120.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Nez Perce county and county seat located at Orofino, act approved Feb. 27, 1911, ch. 24, p. 49; first act creating county, approved Mar. 21, 1901, S.L. 1901, p. 209, declared void. See *Holmberg v. Jones*, 7 Idaho 752, 65 P. 563 (1901).

**31-121. Custer county.** — Custer county is described as follows: beginning at the confluence of the Pahsimeroi river with the Salmon river thence up the Pahsimeroi river to the mouth of the Big creek; thence up Big creek, and on the line from the head thereof, with the general course of said creek to the summit of the divide between the waters of the Pahsimeroi and Lemhi rivers; thence southeasterly on the summit of said divide to a point west from the headwaters of said Little Lost river; thence east to the headwaters of said Little Lost river, thence down Little Lost river to the township line between townships ten (10) north and eleven (11) north; thence west along said township line to the corner common to townships twenty-five and twenty-six (25 and 26) east and townships ten (10) and eleven (11) north; thence south along the line between townships twenty-five (25) and twenty-six (26) east to the corner common to townships eight (8) and nine (9) north; thence west along the line between townships eight

(8) and nine (9) north to the northwest corner of section two (2), township eight (8) north, range twenty-five (25) east B.M.; thence south along the west section line of section two (2) and eleven (11) to the northwest corner of section fourteen (14), township eight (8) north, range twenty-five (25) east B.M. to a point which is on the summit between the divide of Pass creek and Little Lost river; thence down said Pass creek to Big Lost river; thence along Big Lost river to the mouth of Antelope creek; thence up Antelope creek to the divide which separates its waters from those of Little Wood river; thence westerly along and upon the summit of the range of mountains dividing the headwaters of the East Fork of the Salmon river from the waters of the Little and Big Wood rivers, and continuing westerly on said divide between the East Fork of the Salmon and Wood rivers to the intersection of the longitude line of longitude one hundred fourteen (114) degrees, forty (40) minutes west from Greenwich, thence north on said longitude line to a point on said divide due east of the northeast corner of section twenty-four (24), township seven (7) north, range fourteen (14) east; thence due west to the northeast corner of section twenty-four (24), township seven (7) north, range fourteen (14) east; thence west along and upon the section lines to the corner of sections fifteen (15), sixteen (16), twenty-one (21) and twenty-two (22), township seven (7) north, range fourteen (14) east; thence north along and upon the section lines to the corner of sections three (3) and four (4) and thirty-three (33) and thirty-four (34), townships seven (7) and eight (8) north, range fourteen (14) east; thence north along and upon the section lines to the one-quarter ( $\frac{1}{4}$ ) section corner between sections twenty-seven (27) and twenty-eight (28), township eight (8) north, range fourteen (14) east; thence west along and upon the one-quarter ( $\frac{1}{4}$ ) section lines to the west one-quarter ( $\frac{1}{4}$ ) section corner of section thirty (30), township eight (8) north, range fourteen (14) east; thence southwesterly along and upon the summit of the mountains dividing the waters of Yellow Belly lake and Pettit lake to the summit of the Sawtooth mountains; thence northerly along the summit of the Sawtooth mountains to the divide which separates the waters flowing into the South Payette river and Bear Valley creek from those flowing into the main Salmon river and Cape Horn creek; thence along said divide to the Middle Fork of the Salmon river; thence down the Middle Fork of the Salmon river to the mouth of Loon Creek; thence up Loon creek to the mouth of Warm Springs creek; (thence up Warm Springs creek); thence up Warm Springs creek and to the divide which separates the waters of Yankee Fork on the south and Loon and Deep creeks on the North, and following said divide in an easterly direction around the head of Panther creek, to the divide between Hat creek and Ellis creek; thence on the divide between Hat and Ellis creeks in an easterly direction to the Salmon river; thence up the main channel of said Salmon river, to the place of beginning.

County seat — Challis. [Compiled and reen. C.L. 3:19; C.S., § 25; am. 1925, ch. 189, § 2, p. 345; I.C.A., § 30-121; am. 1937, ch. 138, § 1, p. 222.]

#### STATUTORY NOTES

**Compiler's Notes.** — Custer county was created from parts of Lemhi, Alturas and other counties, act approved Jan. 8, 1881, 11 T. Sess. 340; at special election, June 20,

1881, county seat located at Challis, records in office of county recorder; boundaries redefined, act approved Feb. 4, 1889, 15 T. Sess. 26; boundaries redefined and electors residing in portion of Blaine county authorized to determine, at next general election, whether said territory should be cut off from Blaine county and annexed to Custer county, act approved Mar. 9, 1895, S.L. 1895, p. 140; a general election, Nov. 2, 1896, this question as to annexation was for some reason not voted upon; boundaries redefined and electors residing in portion of Blaine county authorized to determine, at next general election, whether said territory should be cut off from Blaine county and annexed to Custer county, act approved Feb. 14, 1899, S.L. 1899, p. 271; at general election, Nov. 6, 1900, annexation to Custer county was not approved, records in office of county recorder; law defining boundaries and locating county seat, reen. R.C., § 23j.

By S.L. 1931, ch. 63, the electors residing in the following described territory were authorized to vote, at general election in November, 1932, on the question of whether such territory should be detached from Custer county and added to Butte county:

"Beginning at the southeast corner of

Custer county where the boundary line of said county intersects the boundary line of Butte and Blaine counties on the divide which separates the waters of Antelope creek and Little Wood river; thence running westerly along and upon the summit of the range of mountains dividing the headwaters of the Big Lost river from the waters of the Little and Big Wood rivers to where said divide is intersected by the divide of that range of mountains which separates the waters of the East Fork of Salmon river from Big Lost river water shed; thence in a northeasterly direction along and upon the summit of the range of mountains dividing the waters of the East Fork of Salmon river and Salmon river from the Big Lost river water shed and continuing southeasterly along and upon said divide between the Pahsimeroi river, a tributary of the said Salmon river, and the Big Lost river water shed, and continuing in a northeasterly direction on the said divide between the water shed of Pahsimeroi river and the water shed of Little Lost river to the intersection of said divide with the boundary line of Lemhi county; thence in a southerly direction on the boundary line between Lemhi, Butte, and Custer counties to the place of beginning."

The records do not disclose that the election was ever held.

**31-122. Elmore county.** — Elmore county is described as follows: beginning at a point on the top of the Sawtooth range of mountains, where the counties of Blaine, Boise, Custer and Elmore unite;

Eastern boundary. Thence in a southerly direction along the summit of the Sawtooth mountains to a point where the trail crosses the summit of what is known as the Mattingly Creek divide; thence in a southerly direction along the main divide between the middle fork and the south fork of the Boise river to a point on the divide between Willow creek and Bear creek; thence in a southerly direction on the main divide between Willow creek and Skeleton creek to the center of the channel of the south fork of the Boise river; thence down the channel of said river to the point of intersection with the range line between ranges eleven (11) and twelve (12) east, approximately in township three (3) north; thence south on the range line between ranges eleven (11) and twelve (12) east, to Snake river;

Southern boundary. Thence down the center of the channel of Snake river to a point where the section line between sections thirty-three (33) and thirty-four (34), township five (5) south, range four (4) east, Boise meridian crosses said Snake river;

Western boundary. Thence in a northerly direction along the north and south center line of townships five (5), four (4), three (3), two (2) and one (1) south, range four (4) east, Boise meridian, to the base line and thence in a northerly direction along the north and south center line of townships one (1), two (2) and three (3) north, range four (4) east, Boise meridian, to a point in the center of the channel of the Boise river where the section line between



sections fifteen (15) and sixteen (16), township three (3) north, range four (4) east, Boise meridian, crosses said Boise river;

Northern boundary. Thence upon and along the boundary line of the county of Boise to the place of beginning.

County seat — Mountain Home. [Compiled and reen. C.L. 3:20; am. 1919, ch. 109, § 1, p. 391; C.S., § 26; am. 1923, ch. 136, § 1, p. 200; am. 1925, ch. 26, § 1, p. 38; I.C.A., § 30-122.]

### STATUTORY NOTES

**Compiler's Notes.** — County created and temporary county seat located at Rocky Bar, act approved Feb. 7, 1889, 15 T. Sess. 37; at election, Oct. 1, 1890, permanent county seat located at Mountain Home, records in office of county recorder; boundaries between Ada and Elmore counties defined, act approved Feb. 9, 1895, S.L. 1895, p. 15; reen. Feb. 14, 1899, S.L. 1899, p. 234; law defining boundaries and locating county seat reen. R.C., § 23k; boundaries redefined, act approved Mar. 3, 1911, S.L. 1911, ch. 148, p. 453.

#### Boundary Changes Affecting Above Section:

*Election of 1930.* By S.L. 1929, ch. 47, the electors residing in the following described territory were authorized to vote, at the general election in November, 1930, on the question of whether such described territory should be detached from Owyhee county and added to Elmore county:

"Commencing at a point where the west boundary line of township 6 south, range 9 east, Boise meridian, intersects the center line of Snake river, and running thence south along the west boundary line of township 6 south, range 9 east, Boise meridian, to the southwest corner of said township 6 south, range 9 east, Boise meridian, thence west to the northwest corner of township 7 south, range 9 east, Boise meridian, and thence south along the west boundary of township 7 south, range 9 east, Boise meridian, to the southwest corner of township 7 south, range 9 east, Boise meridian, thence east along the south boundary line of township 7 south, ranges 9, 10, 11, and 12 east, to the easterly boundary line of Owyhee county, thence north along the easterly boundary line of Owyhee county to a point where said boundary inter-

sects the center line of Snake river, thence westerly, northwesterly, southwesterly and westerly along the center line of Snake river to the place of beginning."

The election was carried in favor of the proposed change.

*Election of 1948.* S.L. 1947, ch. 150 conferred authority upon the electors residing within the following described territory to vote at the general election to be held in 1948 upon the question whether such territory should be detached from Ada county and added to Elmore county.

"Beginning at a point where the section line between sections thirty-three (33) and thirty-four (34), Township five (5) South, Range four (4) East of Boise Meridian, crosses the center of the channel of the Snake River;

"Thence North along the East section line of Sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28), and thirty-three (33), Township five (5) South, Range four (4) East, Boise Meridian, continuing thence North along the East section line of Sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28), and thirty-three (33), Township four (4) South, Range four (4) East to the northeast corner of Section four (4), Township four (4) South, Range four (4) East, Boise Meridian;

"Thence West along the North boundary of Township four (4) South, Range four (4) East, Township four (4) South, Range three (3) East, Township four (4) South, Range two (2) East to its intersection with the center of the channel of Snake River;

"Thence southeasterly up the center of the channel of the said Snake River to the point of beginning."

The election was carried in favor of the proposed change.

**31-123. Franklin county.** — Franklin county is described as follows: beginning at a point on the boundary line between the states of Utah and Idaho where the same is intersected by the section line between sections twenty-six (26) and twenty-seven (27), township sixteen (16) south, range thirty-seven (37) east;

Western boundary. Thence in a northerly direction along the section line as now surveyed to the southeast corner of section twenty-seven (27),



township fourteen (14) south, range thirty-seven (37) east; thence easterly along section line as now surveyed, to the southeast corner of section twenty-six (26), township fourteen (14) south, range thirty-seven (37) east; thence continuing easterly along said line to a point which, when surveyed, will be the southeast corner of section twenty-five (25), township fourteen (14) south, range thirty-seven (37) east; thence northerly along the western boundary of township fourteen (14) south, range thirty-eight (38) east, as now surveyed, to its intersection with the one-sixteenth ( $\frac{1}{16}$ ) section line eighty (80) rods, more or less, south of the township line between townships thirteen (13) and fourteen (14) south;

Northern boundary. Thence east to the western boundary line of Bear Lake county;

Eastern boundary. Thence in a southerly direction along the western boundary of Bear Lake county to its intersection with the boundary between the states of Idaho and Utah;

Southern boundary. Thence westerly along the said boundary line to the point of beginning.

County seat — Preston. [Compiled and reen. C.L. 3:21; C.S., § 27; I.C.A., § 30-123.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Oneida county and temporary county seat located at Preston, act approved Jan. 30, 1913, S.L. 1913, ch. 5, p. 22; at general election, Nov. 3, 1914, permanent county seat located at Preston, records in office of county recorder; electors residing in certain territory authorized to decide at general election to be held in November, 1918, whether said territory should be detached from Bannock county and added to Franklin county, act approved Feb. 8, 1917, S.L. 1917, ch. 96, p. 327.

The description of the point common to Franklin and Bannock counties, being the last few lines of the western boundary, is based on a decree of the district court in an action between the two counties, entered at Preston, Idaho, in September, 1917.

By S.L. 1931, ch. 223, the electors residing in a certain described territory were authorized to vote, at the general election in November, 1932, on the question whether such territory should be detached from Bannock county and added to Franklin county. The proposal was defeated.

S.L. 1947, ch. 255 conferred authority upon the electors residing within certain described

territory to vote at the general election to be held in November, 1948, upon the question whether such territory should be detached from Bannock county and added to Franklin county. The proposal was defeated at the general election held in November, 1948.

#### **Changes in Boundary Affecting Above Section:**

*Election of 1918.* At the election held in November, 1918, in compliance with S.L. 1916, ch. 96, the citizens in the east half of township 13 south, range 39 east, and township 13 south, ranges 40 and 41 east and a one-quarter mile strip in township 14 south, adjoining these, voted to detach themselves from Bannock county and become a part of Franklin county. Hence the description of the Franklin county boundary where it joins Bannock county instead of running east to the summit of the Bear river range would run east to the north one-sixteenth section corner on the east line of section 4, township 14 south, range 39 east; thence north six and one-quarter miles, more or less to the northwest corner of section 3, township 13 south, range 39 east; thence east to the summit of the Bear river range.

**31-124. Fremont county.** — Fremont county is described as follows: beginning at a point where the northern boundary of the state of Idaho intersects the range line between ranges thirty (30) and thirty-one (31) east;

Northern boundary. Thence easterly along the northern boundary of the state of Idaho to a point where said boundary line intersects the western boundary of the state of Wyoming (R. C., § 231);

Eastern boundary. Thence south along the dividing line between Idaho and Wyoming to the point where said dividing line intersects with the North Fork of Bitch creek;

Southern boundary. Thence westerly and down said Bitch creek to where the same intersects the main channel of Teton river; thence down the center of the main channel of said Teton river, to where the same intersects the range line between ranges forty-one (41) and forty-two (42) east; thence south to the township line between townships six (6) and seven (7) north; thence west to the southeast corner of section thirty-five (35), township seven (7) north, range forty (40) east; thence north one (1) mile to the northeast corner of section thirty-five (35); thence west to the northeast corner of section thirty-four (34), township seven (7) north, range thirty-nine (39) east; thence north two (2) miles to the northeast corner of section twenty-two (22), township and range last aforesaid; thence west to the northeast corner of section twenty-one (21), township seven (7) north, range thirty-eight (38) east (1913, ch. 26, § 2, pp. 108, 109); thence north on said section line between said sections twenty-one (21) and twenty-two (22), township and range last aforesaid, to the northeast corner of section four (4), township seven (7) north, range thirty-eight (38) east; thence west nine (9) miles to the southeast corner of township eight (8) north, range thirty-six (36) east; thence north six (6) miles to the northeast corner of said township eight (8) north, range thirty-six (36) east; thence west on the township line between townships eight (8) and nine (9) north, thirty (30) miles to the northeast corner of township eight (8) north, range thirty-one (31) east; thence south six (6) miles to the southeast corner of said township eight (8) north, range thirty-one (31) east; thence west on the township line between townships seven (7) and eight (8) north, to a point on said township line north of the Big Southern Butte (1913, ch. 25, § 2, pp. 95, 96);

Western boundary. Thence north to the point where the line thus drawn intersects the township line between townships ten (10) and eleven (11) north; thence east along said township line to the southwest corner of township eleven (11) north, range thirty-one (31) east; thence north along the range line between ranges thirty (30) and thirty-one (31) east, to the place of beginning (R. C., § 23p).

County seat — St. Anthony. [Compiled and reen. C.L. 3:22; C.S., § 28; I.C.A., § 30-124.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Bingham county and temporary county seat located at St. Anthony, act approved Mar. 4, 1893, S.L. 1893, p. 94; at general election, Nov. 6, 1894, permanent county seat located at St. Anthony, records in office of county recorder; see act defining boundaries of Bingham county, approved Feb. 7, 1889, 15 T.

Sess. 37; electors residing in certain territory of Lemhi county authorized to determine at general election in 1896 whether said territory should be cut off from Lemhi county and annexed to Fremont county, act approved Mar. 11, 1895, S.L. 1895, p. 145; at general election on Nov. 3, 1896, annexation to Fremont county was approved and territory was

annexed, records in office of county recorder; reen. Feb. 14, 1899, S.L. 1899, p. 273; electors residing in certain territory of Bingham county authorized to determine, at next general election, whether said territory should be cut off from Bingham county and annexed to Fremont county, act approved Mar. 6, 1903, S.L. 1903, p. 222; at general election on Nov. 8, 1904, annexation to Fremont county was

approved and territory annexed, records in office of county recorder; law defining boundaries and locating county seat, reen. R.C., § 231; Jefferson county created from, act approved Feb. 18, 1913, S.L. 1913, ch. 25, p. 94; Madison county created from, act approved Feb. 18, 1913, S.L. 1913, ch. 26, p. 107; Clark county created from, act approved Feb. 1, 1919, S.L. 1919, ch. 3, p. 4.

**31-125. Gem county.** — Gem county is described as follows: beginning at the southeast corner of township six (6) north, range one (1) east; thence north twenty-four (24) miles, to the northeast corner of township nine (9) north, range one (1) east; thence east three (3) miles, to the southeast corner of section thirty-three (33), township ten (10) north, range two (2) east; thence north twelve (12) miles, to the southeast corner of section thirty-three (33), township twelve (12) north, range two (2) east; thence east three (3) miles to the southeast corner of township twelve (12) north, range two (2) east; thence north twelve (12) miles to the northeast corner of township thirteen (13) north, range two (2) east; thence west along the north boundary of said township and range, to the intersection with the east boundary of Adams county; thence in a southwesterly direction along the southeast boundary of Adams county, to its intersection with the boundary of Washington county; thence in a southerly direction along the east boundary of Washington county, to its intersection with the north boundary of Canyon county on the north line of township nine (9) north, range one (1) east; thence west along the north boundary of Canyon county to the northwest corner of section three (3), township nine (9) north, range one (1) west; thence south on the section line six (6) miles, to the southeast corner of section thirty-three (33) of said township and range; thence west on the township line between townships eight (8) and nine (9), four (4) miles to the northwest corner of section one (1), township eight (8) north, range two (2) west; thence south on section line four (4) miles, to the southwest corner of section twenty-four (24), said township and range; thence west on section line two (2) miles, to the northwest corner of section twenty-seven (27), said township and range; thence south on section line two (2) miles, to the southeast corner of section thirty-three (33), said township and range; thence west on township line between townships seven (7) and eight (8), seven (7) miles, to the southwest corner of section thirty-three (33), township eight (8) north, range three (3) west; thence south on section line twelve (12) miles, to the southwest corner of section thirty-three (33), township six (6) north, range three (3) west; thence east on township line between townships five (5) and six (6), twenty-two (22) miles, to place of beginning.

County seat — Emmett. [Compiled and reen. C.L. 3:23; C.S., § 29; I.C.A., § 30-125.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Canyon and Boise counties and county seat located at Emmett (enabling act), act approved Mar. 19, 1915, S.L. 1915, ch. 165, p.



362; creation of county approved at special election, May 11, 1915, records in office of county recorder; governor's proclamation, May 18, 1915, records in office of secretary of state.

**31-126. Gooding county.** — Gooding county is described as follows: beginning at the northeast corner of section six (6), township three (3) south, range sixteen (16) east;

Eastern boundary. Thence south twenty-four (24) miles, more or less, along the section line to the southeast corner of section thirty-one (31), township six (6) south, range sixteen (16) east; thence east one (1) mile, more or less, to the northeast corner of section four (4), township seven (7) south, range sixteen (16) east; thence south along the section line, to the thread of the Snake river;

Southern boundary. Thence northwesterly along the thread of the Snake river to the west line of township six (6) south, range twelve (12) east;

Western boundary. Thence north along the west line of range twelve (12) east, to the northwest corner of township three (3) south, range twelve (12) east;

Northern boundary. Thence east along the north line of township three (3) south, to the place of beginning.

County seat — Gooding. [Compiled and reen. C.L. 3:24; C.S., § 30; I.C.A., § 30-126.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Lincoln county and temporary county seat located at Gooding, act approved Jan. 28, 1913, S.L. 1913, ch. 4, p. 13; at general election, Nov. 3, 1914, permanent county seat

located at Gooding, records in office of county recorder; Jerome county created, including a portion of, act approved Feb. 8, 1919, S.L. 1919, ch. 4, p. 14.

**31-127. Idaho county.** — Idaho county is described as follows: beginning at the junction of the Salmon river with the Snake river;

Northern boundary. Thence up the middle of the channel of Salmon river to the mouth of Deep creek; thence up the middle of the channel of Deep creek to the mouth of the Right Fork of Deep creek; thence up the middle of the channel of the Right Fork of Deep creek to a point where the line between ranges one (1) and two (2) west, crosses Deep creek; thence north along the said line to the point where the said line crosses Willow creek; thence down the middle of the channel of Willow creek to its junction with Lawyer's canyon; thence down the middle of the channel of Lawyer's canyon, to its junction with the Clearwater river; thence down the middle of the channel of Clearwater river to the mouth of Lolo creek; thence up the middle of the channel of Lolo creek to the head of Lolo creek; thence in a direct line to the Lolo pass at the summit of the Bitter Root mountains;

Eastern boundary. Thence southeasterly and southerly following the present defined boundary line between the state of Idaho and the state of Montana (1899, p. 79), to a point directly north of the confluence of the Middle Fork of Salmon river with the main Salmon river in the state of Idaho; thence south to the confluence of the Middle Fork of Salmon river with the main Salmon river; thence southerly along the center line or middle

of the channel of said Middle Fork of Salmon river (R. C., § 23m), to its intersection with the fifth (5th) standard parallel north;

Southern boundary. Thence west along said parallel to the divide separating the waters of the Salmon and Payette rivers; thence westerly and southerly (1917, ch. 99, § 2, p. 360), along said divide, to the line of Adams county, at a point east of the northern point of Little Salmon Meadows; thence west to the Little Salmon river; thence down the Little Salmon river to a point east of the point where the section line between sections six (6) and seven (7), township twenty-two (22) north, range one (1) east, intersects the said meridian; thence west to the middle of the main channel of Snake river.

Western boundary. Thence down the middle of the main channel of Snake river, to the mouth of Salmon river, the place of beginning (R. C., § 23m).

County seat — Grangeville. [Compiled and reen. C.L. 3:25; C.S., § 31; I.C.A., § 30-127.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created by act approved Feb. 4, 1864, 1 T. Sess. 628; boundary between counties of Nez Perce and Idaho defined, act approved Jan. 5, 1866, 3 T. Sess. 182; boundary between Boise and Alturas counties defined, act approved Jan. 12, 1866, 3 T. Sess. 214; boundaries between Boise, Ada, and Idaho counties defined, act approved Jan. 10, 1867, 4 T. Sess. 124; Lemhi county created from, act approved Jan. 9, 1869, 5 T. Sess. 117; boundary between Idaho and Ada counties redefined, act approved Jan. 10, 1873, 7 T. Sess. 30; boundary between Lemhi and Idaho counties defined, act approved Jan. 10, 1873, 7 T. Sess. 47; boundary between Idaho and Boise counties defined, act approved Jan. 10, 1873, 7 T. Sess. 64; boundaries redefined, act approved Jan. 8, 1875, 8 T. Sess. 730; Washington county created, including portion of, act approved Feb. 20, 1879, 10 T. Sess. 40; boundaries redefined, act approved Jan. 21, 1885, 13 T. Sess. 126; boundary between Idaho and Boise counties redefined, Special Laws (1887) 120; boundary redefined, act approved Feb. 7, 1889, 15 T.

Sess. 54; boundary redefined, act approved Mar. 2, 1891, 1890-1891, p. 117; boundaries of Washington county redefined, act approved Feb. 23, 1895, 1895, p. 21, reen. Feb. 2, 1899, S.L. 1899, p. 22; boundary redefined, act approved Feb. 2, 1899, 1899, p. 79; boundary between Lemhi and Idaho counties redefined, act approved Feb. 27, 1903, S.L. 1903, p. 48; boundary redefined, act approved Mar. 10, 1903, 1903, p. 204; boundaries of Washington county redefined, act approved Feb. 27, 1905, S.L. 1905, p. 303; law defining boundaries and locating county seat, reen. R.C., § 23m; Valley county created, including portion of, act approved Feb. 26, 1917, S.L. 1917, ch. 99, p. 360; law passed for creation of Selway county, including portion of (enabling act), act approved Mar. 14, 1917, S.L. 1917, ch. 127, p. 418; at a special election, July 2, 1917, creation of Selway county defeated, records in office of county recorder. Electors residing in certain territory of Idaho county authorized to determine, at general election held in November, 1920, whether such territory should be detached from Idaho county and annexed to Valley county, 1919, ch. 101, p. 366.

**31-128. Jefferson county.** — Jefferson county is described as follows: beginning at a point where the township line between range thirty-one (31) and range thirty-two (32) east, intersects the township line between townships three (3) and four (4) north;

Southern boundary. Thence east along said township line between townships three (3) and four (4) north, to the southeast corner of section thirty-three (33), township four (4) north, range forty-one (41) east;

Eastern boundary. Thence north on the section line between sections thirty-three (33) and thirty-four (34), township and range aforesaid, to the northeast corner of section twenty-eight (28), said township and range;

thence west on the section line between sections twenty-one (21) and twenty-eight (28), said township and range, to where the same intersects with the center of the main channel of the South Fork of Snake river; thence down the main channel of said South Fork of Snake river to the conjunction of said stream with the North Fork of Snake river; thence down the center of the main channel of Snake river to a point where the same intersects the section line between sections twenty-one (21) and twenty-two (22), township five (5) north, range thirty-eight (38) east; thence north on said section line between said sections twenty-one (21) and twenty-two (22), township and range last aforesaid, to the northeast corner of section four (4), township seven (7) north, range thirty-eight (38) east; thence west nine (9) miles, to the southeast corner of township eight (8) north, range thirty-six (36) east; thence north six (6) miles, to the northeast corner of said township eight (8) north, range thirty-six (36) east;

Northern boundary. Thence west on the township line between townships eight (8) and nine (9) north, thirty (30) miles, to the northeast corner of township eight (8) north, range thirty-one (31) east;

Western boundary. Thence south (1913, ch. 25, § 2, p. 95) along the township line between range thirty-one (31) and range thirty-two (32) east (1917, ch. 98, § 2, p. 346), to the place of beginning.

County seat — Rigby. [Compiled and reen. C.L. 3:26; C.S., § 32; I.C.A., § 30-128.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Fremont county (enabling act), act approved Feb. 18, 1913, S.L. 1913, ch. 25, p. 94; creation of county approved and county seat located at

Rigby at special election, Nov. 4, 1913, records in office of secretary of state; Butte county created, including portion of, act approved Feb. 6, 1917, S.L. 1917, ch. 98, p. 344.

**31-129. Jerome county.** — Jerome county is described as follows: beginning at the northwest corner of section five (5), township seven (7) south, range sixteen (16) east, Boise meridian;

Northern boundary. Thence east thirteen (13) miles, more or less, to the northeast corner of section five (5), township seven (7) south, range eighteen (18) east, Boise meridian; thence south two (2) miles, more or less, to the southwest corner of section nine (9), township seven (7) south, range eighteen (18) east, Boise meridian; thence east one (1) mile, more or less, to the southeast corner of section nine (9), township seven (7) south, range eighteen (18) east, Boise meridian; thence south one (1) mile, more or less, to the southwest corner of section fifteen (15), township seven (7) south, range eighteen (18) east, Boise meridian; thence east fifteen (15) miles, more or less, to the northeast corner of section twenty-four (24), township seven (7) south, range twenty (20) east, Boise meridian; thence south three (3) miles, more or less, to the northeast corner, section one (1), township eight (8) south, range twenty (20) east, Boise meridian; thence east six (6) miles, more or less, to the northeast corner of township eight (8) south, range twenty-one (21) east, Boise meridian;



Eastern boundary. Thence south following the range line between ranges twenty-one (21) and twenty-two (22) east, Boise meridian, to the center line of Snake river;

Southern boundary. Thence down the center line of the channel of said river, following its meanderings to a point where the same intersects the section line between sections seventeen (17) and eighteen (18) in township nine (9) south, range sixteen (16) east, Boise meridian;

Western boundary. Thence north to the place of beginning.

County seat — Jerome. [1919, ch. 4, §§ 2, 4, p. 14; C.S., § 33; I.C.A., § 30-129.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from parts of Lincoln, Gooding and Minidoka counties by S.L. 1919, ch. 4, p. 15. The remainder of S.L. 1919, ch. 4, p. 15 is omitted as temporary.

#### JUDICIAL DECISIONS

**Cited in:** Oliver v. Wendell Hwy. Dist., 38 Idaho 635, 224 P. 81 (1924).

**31-130. Kootenai county.** — Kootenai county is described as follows: beginning at the point of intersection of the west boundary line of Shoshone county with the north boundary line of section twenty-two (22), township forty-seven (47) north, range one (1) east;

Southern boundary. Thence west along the north boundary line of sections twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township forty-seven (47) north, range one (1) east, to the point of intersection with the Boise meridian; thence along said Boise meridian, to the northeast corner of section twenty-four (24), township forty-seven (47) north, range one (1) west; thence west along the north boundary line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township forty-seven (47) north, range one (1) west, to the range line between township forty-seven (47) north, range one (1) west, and township forty-seven (47) north, range two (2) west; thence along said last mentioned range line to the northeast corner of section twenty-four (24), township forty-seven (47) north, range two (2) west; thence continuing west along the north boundary lines of sections twenty-four (24), twenty-three (23), twenty-two (22), to the northwest corner of section twenty-two (22), township forty-seven (47) north, range two (2) west; thence south along the west line of section twenty-two (22), township forty-seven (47) north, range two (2) west, to the northwest corner of section twenty-seven (27), township forty-seven (47) north, range two (2) west; thence west along the north line of sections twenty-eight (28) and twenty-nine (29), township forty-seven (47) north, range two (2) west, to the northwest corner of section twenty-nine (29), township forty-seven (47) north, range two (2) west; thence south along the west line of sections twenty-nine (29) and thirty-two (32), township forty-seven (47) north, range two (2) west, to the southwest corner of section thirty-two (32), township forty-seven (47) north,

range two (2) west; thence west along the township line between townships forty-six (46) and forty-seven (47) north, range two (2) west, to the intersection of the range line between ranges two (2) and three (3) west; thence continuing west along the township line between townships forty-six (46) and forty-seven (47) north, range three (3) west, to the southwest corner of section thirty-three (33), township forty-seven (47) north, range three (3) west; thence north along the west line of section thirty-three (33), township forty-seven (47) north, range three (3) west, to the northwest corner of section thirty-three (33), township forty-seven (47) north, range three (3) west; thence west along the north line of sections thirty-two (32) and thirty-one (31), township forty-seven (47) north, range three (3) west, to the range line between ranges three (3) and four (4) west; thence south along said range line to the northeast corner of section thirty-six (36), township forty-seven (47) north, range four (4) west; thence west along the north line of section thirty-six (36) and thirty-five (35), township forty-seven (47) north, range four (4) west, to the northwest corner of section thirty-five (35), township forty-seven (47) north, range four (4) west; thence south along the west line of said section thirty-five (35), township forty-seven (47) north, range four (4) west, to the southwest corner of said section thirty-five (35), township forty-seven (47) north, range four (4) west; thence west along the north line of township forty-six (46) north, ranges four (4), five (5) and six (6) west (1915, ch. 4, § 3, pp. 7, 8), to the point of intersection of the Idaho-Washington state line with the northern boundary line of township forty-six (46) north of the Boise base line;

Western boundary. Thence north along said state boundary line to a point where the same is intersected by the line between townships fifty-three (53) and fifty-four (54) north;

Northern boundary. Thence east along said township line between townships fifty-three (53) and fifty-four (54) north, to the northeast corner of township fifty-three (53) north, range three (3) west; thence north on the range line between sections thirty-six (36) and thirty-one (31) to the northeast corner of section thirty-six (36), township fifty-four (54) north, range three (3) west; thence east six (6) miles, to the northeast corner of section thirty-six (36), township fifty-four (54) north, range two (2) west; thence south along the range line between ranges one (1) and two (2) west, to the southwest corner of township fifty-three (53) north, range one (1) west; thence east on the township line between townships fifty-two (52) and fifty-three (53) north, to the intersection of the said line with the western boundary of Shoshone county (1909, p. 318);

Eastern boundary. Thence south along the western boundary of Shoshone county, to the point of beginning (1915, ch. 4, § 2, p. 6).

County seat — Coeur d'Alene. [Compiled and reen. C.L. 3:27; C.S., § 34; I.C.A., § 30-130.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created and county seat located at Sin-na-ac-qua-teen, act approved Dec. 22, 1864, 2 T. Sess. 432; see law

creating Shoshone county, act approved Feb. 4, 1864, 1 T. Sess. 628; boundaries redefined, act approved Jan. 9, 1867, 4 T. Sess. 126,

boundary between Kootenai and Latah counties defined, act in effect Feb. 22, 1905, S.L. 1905, p. 333; county abolished and counties of Lewis and Clark created therefrom, act approved Feb. 28, 1905, S.L. 1905, p. 76; law abolishing county declared unconstitutional, *McDonald v. Doust*, 11 Idaho 14, 81 P. 60 (1905); Bonner county created from, act approved Feb. 21, 1907, S.L. 1907, p. 47; law defining boundaries and locating county seat at Rathdrum, R.C., § 23n; boundaries redefined and county seat located at Coeur d'Alene, act approved Mar. 11, 1909, S.L. 1909, p. 318; Benewah county created from, act approved Jan. 23, 1915, S.L. 1915, ch. 4, p.

5. "Southwest corner of township fifty-three (53) north, range one (1) west" substituted in Compiled Laws for "northeast corner of township 52 north, range 2 west, B.M." found in the description of this county in the 11th and 12th lines from the bottom of p. 318, 1909, to correct obvious error.

S.L. 1949, ch. 92 authorized the electors residing in a certain described territory to determine whether such territory should be detached from Kootenai County and added to Benewah County. The election was never held and a writ of mandate was refused by the district court.

**31-131. Latah county.** — Latah county is described as follows: beginning at a point where the middle line of township thirty-seven (37) north intersects the boundary line between the state of Idaho and the state of Washington;

Western boundary. Thence north along the said boundary line to a point where the watershed between Hangman's creek and Palouse river crosses the said boundary line;

Northern boundary. Thence in a southeasterly direction along the said watershed to a point where this line crosses the section line between sections twenty-seven (27) and twenty-eight (28), township forty-three (43) north, range four (4) west; thence south on the said section line to the section corner common to sections twenty-seven (27), twenty-eight (28), thirty-three (33) and thirty-four (34), in the same township and range; thence east on this section line to the eastern boundary of the said township and range; thence north on the range line to the northwest corner of section thirty-one (31), township forty-three (43) north, range three (3) west; thence east along the section line running on the north of said section thirty-one (31), to the northeast corner of section thirty-three (33), township forty-three (43) north, range one (1) west; thence south one (1) mile, to the township line between townships forty-two (42) and forty-three (43) north; thence east along the said township line to a point directly north of the mouth of the North Fork of the Clearwater river;

Eastern boundary. Thence south to the middle line of township thirty-eight (38) north;

Southern boundary. Thence west on the middle line of township thirty-eight (38) north to the point of intersection of said middle line and the center of Big Potlatch creek; thence along the average center of said creek south 41°29'00" west 433.17 feet; thence south 83°01'30" west 555.76 feet; thence north 72°43'45" west 486.51 feet; thence north 41°28'30" west 762.95 feet; thence north 72°52'00" west 134.45 feet; to a point which is north 358.29 feet from the corner common to Sections 16, 17, 20 and 21, township thirty-eight (38) north, range 2 west, Boise Meridian; thence north 72°52'00" west 2007.63 feet; thence south 48°22'30" west 949.70 feet; thence north 88°25'15" west 1485.48 feet; thence south 45°57'45" west 770.90 feet; thence north 82°46'15" west 750.35 feet; thence south 43°28'45" west 1160.84 feet; thence south 65°32'00" west 804.18 feet; thence south 46°29'30" west 527.72



feet; thence south 53°01'15" west 717.00 feet; to a point which is south 2073.86 feet from the one-quarter corner common to Sections 18 and 19 township thirty-eight (38) north, range 2 west, Boise Meridian; thence south 53°01'15" west 685.19 feet; thence south 30°54'30" west 1373.34 feet; thence south 84°44'45" west 1151.76 feet; thence south 21°04'00" east 1132.26 feet; thence south 05°04'00" west 902.41 feet; thence south 78°56'15" west 493.86 feet; to a point which is south 657.49 feet from the corner common to Sections 24, 19, 31 and 25, township thirty-eight (38) north, range 3 west and range 2 west, Boise Meridian; thence south 78°56'15" west 136.97 feet; thence north 87°54'15" west 2370.65 feet; thence south 73°27'15" west 1216.03 feet; thence south 34°56'45" west 2443.32 feet; thence south 55°35'15" west 258.89 feet to a point which is south 447.50 feet from the one-quarter corner common to Sections 26 and 25, township thirty-eight (38) north, range 3 west, Boise Meridian; thence south 55°35'15" west 2071.08 feet; thence south 42°55'30" west 1609.29 feet; to a point which is located west 2811.85 feet from the corner common to Sections 26, 25, 36 and 35, township thirty-eight (38) north, range 3 west, Boise Meridian; thence south 44°33'29" west 950.95 feet; thence south 07°36'44" west 869.85 feet; thence south 28°34'42" west 740.46 feet; thence south 30°26'40" west 397.99 feet; thence south 03°38'57" west 618.32 feet; thence south 38°21'12" west 690.57 feet; thence south 54°22'07" west 56.90 feet; thence south 69°39'54" west 343.03 feet; thence south 82°19'22" west 333.65 feet; thence south 65°55'57" west 647.97 feet; thence south 63°14'18" west 784.25 feet; thence north 85°46'49" west 1140.68 feet; thence south 37°18'55" west 820.62 feet; thence south 30°42'01" west 840.83 feet; thence south 02°55'30" east 1395.50 feet; thence south 10°47'35" west 233.84 feet; thence south 52°26'42" west 474.82 feet; thence south 31°23'33" west 1307.49 feet; thence south 15°45'00" west 732.84 feet; thence south 10°27'38" east 755.37 feet to a point which is east 662.51 feet and north 02°06'09" west 8.57 feet from the corner common to Sections 3, 4, 9 and 10 township thirty-seven (37) north, range 3 west, Boise Meridian, which corner is marked by a Brass Cap Monument set 1556.70 feet east of said corner set by James W. Grow, R.L.S. #749; thence south 02°06'09" east 317.10 feet; thence south 11°10'52" west 528.81 feet; thence south 33°23'33" west 1343.54 feet; thence south 18°47'37" east 514.74 feet; thence south 18°33'57" west 902.43 feet; thence south 10°36'14" west 654.11 feet; thence south 21°02'12" west 343.00 feet; thence south 31°52'33" west 896.41 feet, to a point that is west 983.97 feet and north 05°04'43" east 80.67 feet from the corner common to Sections 9, 10, 15 and 16, township thirty-seven (37) north, range 3 west, Boise Meridian, being marked by a 5/8" iron pin set in a mound of stone by James W. Grow, R.L.S. #749, and by a Brass Cap Monument set 1136.66 feet west of said section corner; thence south 05°04'43" west 488.49 feet; thence south 15°20'14" west 272.28 feet; thence south 27°52'57" west 661.93 feet; thence south 57°36'12" west 456.93 feet; thence south 21°50'14" west 385.38 feet; thence south 12°45'28" east 367.96 feet; thence south 67°00'39" east 464.34 feet; thence south 22°07'05" west 1097.33 feet; thence south 33°13'49" west 576.62 feet; thence south 13°03'47" east 296.08 feet; thence south 34°16'41" west 1198.35 feet; thence south 21°36'07" west 183.18 feet to a point on the north line of Section 21,

township thirty-seven (37) north, range 3 west, Boise Meridian, said point being east 1482.32 feet from the northwest corner of said Section 21, which corner is marked by a Brass Cap Monument lying east 1845.18 feet from said corner; thence west along the middle line of township thirty-seven (37) north to the point of beginning.

County Seat—Moscow. [Compiled and reen. C.L. 3:28; C.S., § 35; I.C.A., § 30-131; am. 1978, ch. 248, § 1, p. 543.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Nez Perce county by Act of Congress, approved May 14, 1888, 25 U.S. Stat. at L. 147; see law creating Shoshone county, act approved Feb. 4, 1864, 1 T. Sess. 628; boundary between Kootenai and Latah counties rede-

fined, act in effect Feb. 22, 1905, S.L. 1905, p. 333; law defining boundaries and locating county seat, reen. R.C., § 230; redefining boundaries, act approved Mar. 11, 1909, S.L. 1909, p. 318.

**31-132. Lemhi county.** — Lemhi county is described as follows: beginning at a point where the divide between the watersheds of the Salmon river and the Clearwater river in the state of Idaho intersect the boundary line between the state of Idaho and the state of Montana; thence in a southwesterly direction along said divide to its junction with the divide between the watershed of Horse creek on the east and watershed of Squaw creek and other creeks on the west; thence southerly along said divide between Horse creek on the east, and Squaw creek and other creeks on the west, to Salmon river; thence along the center line of the middle of the stream of Salmon river southeasterly and up stream to the confluence of the Middle Fork of Salmon river with the main Salmon river in the state of Idaho; thence southerly along the center line of the middle of the channel of the said Middle Fork of the Salmon river to the mouth of Loon creek (1903, p. 48); thence up Loon creek to the mouth of Warm Spring creek; thence up Warm Spring creek to the divide which separates the waters of Yankee Fork on the south and Loon and Deep creeks on the north, and following the said divide in an easterly direction around the head of Panther creek to the divide between Hat creek and Ellis creek; thence on the divide between Hat and Ellis creeks in an easterly direction to the Salmon river; thence up the main channel of said Salmon river to the confluence of the Pahsimeroi river with the Salmon river; thence up the Pahsimeroi river to the mouth of Big creek; thence up Big creek and on a line from the head thereof with a general course of the said creek to the summit of the divide between the waters of the Pahsimeroi river and the Lemhi river; thence southeasterly on the summit of the said divide to a point west from the headwaters of the Little Lost river; thence east to the headwaters of the Little Lost river; thence down the Little Lost river (15 Ter. Sess. 26) to the intersection of the same with the township line between townships ten (10) and eleven (11) north; thence east along the said township line (1899, p. 111), to the southwest corner of township eleven (11) north, range thirty-one (31) east; thence north along the range line between ranges thirty (30) and thirty-one (31) east, to the intersection of the same with the boundary line of the state of Montana



(1899, p. 273); thence generally in a northwesterly direction along the said state boundary line to the point of beginning.

County seat—Salmon. [Compiled and reen. C.L. 3:29; C.S., § 36; I.C.A., § 30-132.]

### STATUTORY NOTES

**Compiler's Notes.** — County created from Idaho county and county seat located at Salmon City, act approved Jan. 9, 1869, 5 T. Sess. 117; boundary between Lemhi and Idaho counties defined, act approved Jan. 10, 1873, 7 T. Sess. 47; boundary between Lemhi and Alturas counties defined, act approved Feb. 9, 1881, in effect April 1, 1881, 11 T. Sess. 329; survey of boundary line between Lemhi and Bingham counties authorized, act approved Feb. 5, 1885, 13 T. Sess. 46; see law defining boundaries of Custer county, act approved Feb. 4, 1889, 15 T. Sess. 26; boundaries redefined, act approved Mar. 7, 1891, 1890-1891, p. 166; electors residing in portion of Lemhi county authorized to determine, at general election in 1896, whether said terri-

tory should be cut off from Lemhi county and annexed to Fremont county, act approved Mar. 11, 1895, S.L. 1895, p. 145; at general election, Nov. 3, 1896, annexation to Fremont county was approved and territory was annexed, records in office of county recorder; law authorizing annexation of territory reenacted, act approved Feb. 14, 1899, S.L. 1899, p. 273; boundary between Lemhi and Idaho counties redefined, act approved Feb. 27, 1903, S.L. 1903, p. 48; law defining boundaries and locating county seat reen. R.C., § 23p; boundaries redefined, act approved Mar. 10, 1911, S.L. 1911, ch. 218, p. 699; "southwest" substituted in Compiled Laws for "southeast," 1911, ch. 218, p. 701, line 2, to correct obvious error.

**31-133. Lewis county.** — Lewis county is described as follows: beginning at the mouth of Lolo creek;

Northern boundary. Thence in a northerly direction down the middle of the channel of the Clearwater river to a point where the seventh (7th) standard parallel north crosses the Clearwater river; thence west along said parallel to a point where the same intersects Little Canyon creek; thence down the center of the channel of Little Canyon creek to a point where the same empties into Big Canyon creek; thence up the center of the channel of the Big Canyon creek to a point where the same crosses the township line between townships thirty-four (34) and thirty-five (35) north; thence west on said township line, to a point where the same crosses Mission creek;

Western boundary. Thence up the middle of the channel of Mission creek to a point where the same crosses the township line between townships thirty-three (33) and thirty-four (34) north; thence west on said township line to the northeast corner of section four (4), township thirty-three (33) north, range three (3) west; thence south on section lines to the center of the channel of Salmon river;

Southern boundary. Thence up the center of the channel of Salmon river to the mouth of Deep creek; thence up the middle of the channel of Deep creek to the mouth of the Right Fork of Deep creek; thence up the middle of the channel of the Right Fork of Deep creek to a point where the line between ranges one (1) and two (2) west, crosses said Deep creek; thence north along said line to the point where the said line crosses Willow creek; thence down the middle of the channel of Willow creek to its junction with Lawyer's canyon; thence down the middle of the channel of Lawyer's canyon to its junction with the Clearwater river;

Eastern boundary. Thence down the middle of the channel of Clearwater river to the mouth of Lolo creek, the place of beginning.



County seat—Nez Perce. [Compiled and reen. C.L. 3:30; C.S., § 37; I.C.A., § 30-133.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Nez Perce county and temporary county seat located at Nez Perce, act approved Mar. 3, 1911, in effect Mar. 20, 1911, S.L. 1911, ch. 37, p. 77; at general election, Nov. 5, 1912, permanent county seat located at Nez Perce, records in office of county recorder (see Leach v. Nez Perce, 24 Idaho 322, 133 P. 926); law enacted for creation of Selway county from

part of (enabling act), act approved Mar. 14, 1917, S.L. 1917, ch. 127, p. 418; creation of Selway county defeated at special election, July 2, 1917, records in office of county recorder; a previous act creating a Lewis county from Kootenai county, approved Feb. 28, 1905, S.L. 1905, p. 76, declared unconstitutional. McDonald v. Doust, 11 Idaho 14, 81 P. 60 (1905).

**31-134. Lincoln county.** — Lincoln county is described as follows: beginning at the northeast corner of section six (6), township three (3) south, range sixteen (16) east;

Western boundary. Thence south twenty-four (24) miles, more or less, along the section line to the southeast corner of section thirty-one (31), township six (6) south, range sixteen (16) east; thence east one (1) mile, more or less, to the northeast corner of section four (4), township seven (7) south, range sixteen (16) east; thence south along the section line to the thread of the Snake river (1913, ch. 4, § 2, p. 14);

Southern boundary. Thence easterly following the middle of the channel of Snake river to a point where the center line of the Snake river is intersected by the west section line of section three (3), township ten (10) south, range eighteen (18) east;

Eastern boundary. Thence northerly along the said section line to the northwest corner of section three (3), township nine (9) south, range eighteen (18) east; thence easterly along the township line to the northwest corner of township nine (9) south, range twenty-two (22) east; thence north along the township line to the northwest corner of township eight (8) south, range twenty-two (22) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township seven (7) south, range twenty-three (23) east; thence north along section line to the north line of township seven (7) south, range twenty-three (23) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township six (6) south, range twenty-three (23) east; thence northerly along a line which is three (3) miles west of and generally parallel to the east line of range twenty-three (23) east, north of the first (1st) standard parallel south, to the north line of township three (3) south, range twenty-three (23) east (1913, ch. 3, § 2, p. 5);

Northern boundary. Thence west along the township line between townships two (2) and three (3) south, to the place of beginning (R. C., § 23q).

County seat—Shoshone. [Compiled and reen. C.L. 3:31; C.S., § 38; I.C.A., § 30-134.]

## STATUTORY NOTES

**Compiler's Notes.** — County created and county seat located at Shoshone, act approved Mar. 18, 1895, S.L. 1895, p. 170; law defining boundaries and locating county seat reen. R.C., § 23q; Minidoka county created from, act approved Jan. 28, 1913, S.L. 1913, ch. 3, p. 5; Gooding county created from, act approved Jan. 28, 1913, S.L. 1913, ch. 4, p. 13; a

previous act creating Lincoln county, approved Mar. 3, 1891, 1890-1891, p. 120, declared unconstitutional, *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891); Jerome county created, including a portion of, act approved Feb. 8, 1919, S.L. 1919, ch. 4, p. 14.

**31-135. Madison county.** — Madison county is described as follows: beginning at the southwest corner of section thirty-four (34), township four (4) north, range forty-one (41) east (1913, ch. 26, § 2, p. 108);

Southern boundary. Thence easterly along the township line between townships three (3) and four (4) north (R. C. 23l ) to a point two (2) miles east of the range line which, when surveyed, will be between ranges forty-two (42) and forty-three (43) east (1915, ch. 8, § 2, p. 30);

Eastern boundary. Thence north to the center of the main channel of Teton river, where said river intersects the section line between sections sixteen (16) and seventeen (17), township seven (7) north, range forty-three (43) east (1915, ch. 8, § 2, p. 30);

Northern boundary. Thence down the center of the main channel of said Teton river to where the same intersects the range line between ranges forty-one (41) and forty-two (42) east; thence south to the township line between townships six (6) and seven (7) north; thence west to the southeast corner of section thirty-five (35), township seven (7) north, range forty (40) east; thence north one (1) mile, to the northeast corner of section thirty-five (35); thence west to the northeast corner of section thirty-four (34), township seven (7) north, range thirty-nine (39) east; thence north two (2) miles to the northeast twenty-one (21) and twenty-two (22), township and range last aforesaid, thence west to the northeast corner of section twenty-one (21), township seven (7) north, range thirty-eight (38) east;

Western boundary. Thence south on the section line between sections twenty-one (21) and twenty-two (22), township and range last aforesaid, to the township line between townships six (6) and seven (7) north; thence continuing in a southerly direction on the line which, when surveyed, will be the section line between sections three (3) and four (4), township six (6) north, range thirty-eight (38) east, to the southern boundary of said township; thence south along the section line between sections three (3) and four (4), township five (5) north, range thirty-eight (38) east, to where the same intersects the center of the main channel of the Snake river; thence up the center channel of said Snake river to the junction of the North and South Forks of the Snake river, and continuing up the center channel of said South Fork of Snake river to where the same intersects the section line that runs due east between sections twenty-three (23) and twenty-six (26), township four (4) north, range forty (40) east; thence east on said section line last aforesaid in said last mentioned township and range to the northeast corner of section twenty-eight (28), township four (4) north, range forty-one (41) east; thence south two (2) miles to the place of beginning (1913, ch. 26, § 2, p. 109).

County seat—Rexburg. [Compiled and reen. C.L. 3:32; C.S., § 39; I.C.A., § 30-135.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Fremont county (enabling act), act approved Feb. 18, 1913, S.L. 1913, ch. 26, p. 107; creation of county approved and county seat located at Rexburg at special election, Nov. 4, 1913, records in office of secretary of state; Teton county created from, act approved Jan. 26, 1915, ch. 8, p. 29.

**31-136. Minidoka county.** — Minidoka county is described as follows: beginning at the point where the center line of the Snake river is intersected by the west section line of section three (3), township ten (10) south, range eighteen (18) east;

Western boundary. Thence northerly along the said section line to the northwest corner of section three (3), township nine (9) south, range eighteen (18) east; thence easterly along the township line to the northwest corner of township nine (9) south, range twenty-two (22) east; thence north along the township line to the northwest corner of township eight (8) south, range twenty-two (22) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township seven (7) south, range twenty-three (23) east; thence north along the section line to the north line of township seven (7) south, range twenty-three (23) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township six (6) south, range twenty-three (23) east; thence northerly along a line which is three (3) miles west of and generally parallel to the east line of range twenty-three (23) east, north of the first (1st) standard parallel south, to the north line of township three (3) south, range twenty-three (23) east;

Northern boundary. Thence easterly along said township line (1913, ch. 3, § 2, pp. 5, 6) to the intersection of the same with the line between ranges twenty-five (25) and twenty-six (26) east; thence south along the said range line (R. C., § 23e), to its intersection with the center line of Snake river; thence southwesterly along said center line of Snake river, to the point of beginning (1913, ch. 3, § 2, p. 6).

County seat—Rupert. [Compiled and reen. C.L. 3:33; C.S., § 40; I.C.A., § 30-136.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Lincoln county and temporary county seat located at Rupert, act approved Jan. 28, 1913, S.L. 1913, ch. 3, p. 5; at general election Nov. 3, 1914, permanent county seat located at Rupert, records in office of county recorder; Jerome county created, including a portion of, act approved Feb. 8, 1919, S.L. 1919, ch. 4, p. 14.

**31-137. Nez Perce county.** — Nez Perce county is described as follows: beginning at the northwest corner of section twenty-two (22), township thirty-eight (38) north, range one (1) west;

Eastern boundary. Thence south to the north boundary line of the Nez Perce Indian reservation; thence easterly along said reservation line to the



intersection of the same with the line running south between sections fifteen (15) and sixteen (16), township thirty-seven (37) north, range one (1) west; thence south on the said line between sections fifteen (15) and sixteen (16), to the middle of the channel of Clearwater river; thence up the middle of the channel of said Clearwater river to a point where the same is intersected by the section line between sections five (5) and six (6), township thirty-six (36) north, range one (1) east; thence south on the section line between said sections five (5) and six (6) to the middle of the channel of Little Canyon creek (1911, ch. 24, section 2, p. 50); thence down the center of the channel of Little Canyon creek to a point where the same empties into Big Canyon creek; thence up the center of the channel of Big Canyon creek to a point where the same crosses the township line between townships thirty-four (34) and thirty-five (35) north; thence west on said township line to a point where the same crosses Mission creek; thence up the middle of the channel of Mission creek to a point where the same crosses the township line between townships thirty-three (33) and thirty-four (34) north; thence west on said township line to the northeast corner of section four (4), township thirty-three (33) north, range three (3) west; thence south on section lines to the center of the channel of Salmon river (1911, ch. 37, section 2, pp. 77, 78);

Southern boundary. Thence down the middle of the channel of Salmon river to a point in the middle of the channel of Snake river opposite the junction of Salmon river;

Western boundary. Thence northerly along the boundary line between the state of Idaho and the state of Washington to the point where said boundary line is intersected by the middle line of township thirty-seven (37) north;

Northern boundary. Thence east to a point where the Big Potlatch creek intersects with the said middle line of township thirty-seven (37) north; being at the northwest corner of Section 21, T.37N., R.3W. B.M., which corner is marked by a Brass Cap Monument lying east 1845.18 feet from said corner; thence east 1482.82 feet along the north line of said Section 21 to the centerline of Potlatch river, being the point of beginning of said county line; thence continue northerly along the centerline of said Potlatch river the following courses: N.21°36'07"E. 183.18 feet; thence N.34°16'41"E. 1198.35 feet; thence N.13°03'47"W. 296.08 feet; thence N.33°13'49"E. 576.62 feet; thence N.22°07'05"E. 1097.33 feet; thence N.67°00'39"W. 464.34 feet; thence N.12°45'28"W. 367.96 feet; thence N.21°50'14"E. 385.38 feet; thence N.57°36'12"E. 456.93 feet; thence N.27°52'57"E. 661.93 feet; thence N.15°20'14"E. 272.28 feet; thence N.5°04'43"E. 488.49 feet to a point that is west 983.97 feet and N.5°04'43"E. 80.67 feet from the corner common to Sections 9, 10, 15, and 16, T.37N., R.3W. B.M., being marked by a  $\frac{5}{8}$ " iron pin set in a mound of stone by James W. Grow, R.L.S. #749, and by a Brass Cap Monument set 1136.66 feet west of said Section corner; thence continue along the centerline of Potlatch river N.31°52'33"E. 896.41 feet; thence N.21°02'12"E. 343.00 feet; thence N.10°36'14"E. 654.11 feet; thence N.18°33'57"E. 902.43 feet; thence N.18°47'37"W. 514.74 feet; thence N.33°23'33"E. 1343.54 feet; thence N.11°10'52"E. 528.81 feet; thence N.2°06'09"W. 317.10 feet to a point which is east 662.51 feet and N.2°06'09"W. 8.57 feet from the corner common to Sections 3, 4, 9 and 10,

T.37N., R.3W. B.M., which corner is marked by a Brass Cap Monument set 1556.70 feet east of said corner set by James W. Grow, R.L.S. #749; thence continue along the centerline of Potlatch river N.10°27'38"W. 755.37 feet; thence N.15°45'00"E. 732.84 feet; thence N.31°23'33"E. 1307.49 feet; thence N.52°26'42"E. 474.82 feet; thence N.10°47'35"E. 233.84 feet; thence N.2°55'30"W. 1395.50 feet; thence N.30°42'01"E. 840.83 feet; thence N.37°18'55"E. 820.62 feet; thence S.85°46'49"E. 1140.68 feet; thence N.63°14'18"E. 784.25 feet; thence N.65°55'57"E. 647.97 feet; thence N.82°19'22"E. 333.65 feet; thence N.69°39'54"E. 343.03 feet; thence N.54°22'07"E. 56.90 feet; thence N.38°21'12"E. 690.57 feet; thence N.3°38'57"E. 618.32 feet; thence N.30°26'40"E. 397.99 feet; thence N.28°34'42"E. 740.46 feet; thence N.7°36'44"E. 869.85 feet; thence N.44°33'29"E. 950.95 feet to a point on the north line of Section 35, T.38N., R.3W. B.M., being the point of terminus of said county line. Said point being west 2811.24 feet from the northeast corner of said Section 35, which is marked by a Brass Cap Monument set 3091.98 feet west of said corner, being set by James W. Grow, R.L.S. #749.

County seat—Lewiston. [Compiled and reen. C.L. 3:34; C.S., § 41; I.C.A., § 30-137; am. 1978, ch. 248, § 2, p. 543.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created, act approved Feb. 4, 1864, 1 T. Sess. 628; boundaries between Nez Perce and Idaho counties defined, act approved Jan. 5, 1866, 3 T. Sess. 182; boundaries redefined, act approved Jan. 9, 1867, 4 T. Sess. 126; see act defining boundaries of Idaho county, approved Jan. 21, 1885, 13 T. Sess. 126; Latah county created from, act approved May 14, 1888, 25 U.S. Stat. at L. 147; boundaries of Idaho county defined, act approved Feb. 2, 1899, S.L. 1899, p. 79; boundaries redefined, act approved Mar. 21, 1901, S.L. 1901, p. 209; electors residing in portion of Shoshone county authorized to determine, at next general election, whether said territory should be cut off from Shoshone county and annexed to Nez Perce county, act approved Mar. 10, 1903, S.L. 1903, p. 204; at

general election, Nov. 8, 1904, annexation to Nez Perce county approved and territory annexed, records in office of county recorder, see act approved Feb. 16, 1905, S.L. 1905, p. 331; law defining boundaries and locating county seat reen. R.C., § 23r; boundaries redefined, act approved March 11, 1909, S.L. 1909, p. 318; Clearwater county created from, act approved Feb. 27, 1911, S.L. 1911, ch. 24, p. 49; Lewis county created from, act approved Mar. 3, 1911, in effect Mar. 20, 1911, S.L. 1911, ch. 37, p. 77.

Reference to early history, see Scully v. Squier, 13 Idaho 417, 90 P. 573 (1907), aff'd, 215 U.S. 144, 30 S. Ct. 51, 54 L. Ed. 131 (1909).

The words enclosed in parentheses so appeared in the law as enacted.

**31-138. Oneida county.** — Oneida county is described as follows: beginning at a point where the one hundred thirteenth (113th) meridian west from Greenwich intersects with the southern line of township twelve (12) south;

Western boundary. Thence south along the said meridian to a point where said meridian intersects with the northern boundary line of the state of Utah (R. C., § 23s);

Southern boundary. Thence easterly along said boundary line to a point on the boundary line between the states of Utah and Idaho, where the same is intersected by the section line between sections twenty-six (26) and twenty-seven (27), township sixteen (16) south, range thirty-seven (37) east;



Eastern boundary. Thence in a northerly direction along the section line as now surveyed to the southeast corner of section twenty-seven (27), township fourteen (14) south, range thirty-seven (37) east; thence easterly along said section line as now surveyed to the southeast corner of section twenty-six (26), township fourteen (14) south, range thirty-seven (37) east; thence continuing easterly along said line to a point which, when surveyed, will be the southeast corner of section twenty-five (25), township fourteen (14) south, range thirty-seven (37) east; thence northerly along the western boundary of township fourteen (14) south, range thirty-eight (38) east, as now surveyed, to its intersection with the boundary line (1913, ch. 5, § 2, pp. 22, 23) of Bannock county; thence west along the boundary line of Bannock county to a point on the top of the range west of a point one (1) mile south of the present southern boundary of the townsite of Oxford; thence northwesterly along the crest of the mountains between Malad and Marsh valleys to an intersection of the township line between ranges thirty-six (36) and thirty-seven (37) east, Boise meridian, thence north to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-five (25), township twelve (12) south, range thirty-six (36) east, Boise meridian; thence west through the center of sections twenty-five (25), twenty-six (26), twenty-seven (27) and to the center of section twenty-eight; thence south on the north and south center line of sections twenty-eight (28) and thirty-three (33), township twelve (12) south, range thirty-six (36) east, Boise meridian, to the top of the crest of the mountains between Malad and Marsh valleys; thence northwesterly along the crest of the mountains between Malad and Marsh valleys to the southeast corner of section twenty-four (24), township eleven (11) south, range thirty-five (35) east, Boise meridian; thence following the unbroken crest of the main mountain range to the northwest corner of section twenty-three (23), township eleven (11) south, range thirty-five (35) east; thence north one-half ( $\frac{1}{2}$ ) mile, to the quarter corner between sections fourteen (14) and fifteen (15); thence west one (1) mile to the quarter corner of sections fifteen (15) and sixteen (16); thence north one-half ( $\frac{1}{2}$ ) mile, to the northwest corner of section fifteen (15); thence west one-fourth ( $\frac{1}{4}$ ) mile; thence north one-half ( $\frac{1}{2}$ ) mile; thence west one-half ( $\frac{1}{2}$ ) mile; thence north one-half ( $\frac{1}{2}$ ) mile; thence west one-fourth ( $\frac{1}{4}$ ) mile, to the northwest corner of section nine (9), township eleven (11) south, range thirty-five (35) east; thence north one (1) mile, to the northwest corner of section four (4), township eleven (11) south, range thirty-five (35) east, which is the point of intersection with the township line between townships ten (10) and eleven (11) south, range thirty-five (35) east;

Northern boundary. Thence west along and upon the south line of said township ten (10), to a point on said line two (2) miles east from the southeast corner of township ten (10) south, range thirty-three (33) east (1913, ch. 6, § 2, p. 32); thence south to a point where the line thus drawn intersects the line between townships eleven (11) and twelve (12) south, range thirty-four (34) east (1915, ch. 132, § 2, p. 288); thence west along and upon the south line of said township eleven (11) south, to the southeast corner of township eleven (11) south, range thirty-two (32) east; thence south upon the township line to the southeast corner of township twelve (12)



south, range thirty-two (32) east; thence west upon and along the southern line of said township twelve (12), to the place of beginning (1913, ch. 6, § 2, p. 32). [Compiled and reen. C.L. 3:35; C.S., § 42; am. 1927, ch. 256, § 6, p. 431; I.C.A., § 30-138.]

### STATUTORY NOTES

**Cross References.** — Authorization of survey to establish new boundary between Bannock and Oneida counties, see note, § 31-105.

**Compiler's Notes.** — County created and county seat located at Soda Springs, act approved Jan. 22, 1864, 1 T. Sess. 625; county seat removed from Soda Springs and located at Malad City, act approved Jan. 5, 1866, 3 T. Sess. 182; boundaries between Owyhee and Oneida counties defined, act approved Jan. 2, 1871, 6 T. Sess. 54; Bear Lake county created from, act approved Jan. 5, 1875, 8 T. Sess. 720; boundaries between Alturas and Oneida counties defined, act approved Jan. 8, 1877, 9 T. Sess. 90; Bingham county created, act approved Jan. 13, 1885, 13 T. Sess. 41; see act creating Bannock county, approved Mar. 6, 1893, S.L. 1893, p. 170; law defining boundaries and locating county seat reen. R.C., § 23s; Franklin county created from, act approved Jan. 30, 1913, S.L. 1913, ch. 5, p. 22; Power county created, including portion of, act approved Jan. 30, 1913, S.L. 1913, ch. 6, p.

30; electors residing in portion of Oneida county authorized to determine, at general election to be held in November, 1916, whether said territory should be cut off from Oneida county and annexed to Power county, act approved Mar. 15, 1915, S.L. 1915, ch. 132, p. 287; at general election, Nov. 7, 1916, annexation to Power county approved and territory annexed, records in office of county recorder.

The description of the eastern boundary, which is common to Oneida and Bannock counties, is taken from the description of this boundary line as established by a joint survey made by the county surveyor of Bannock county and the acting county surveyor of Oneida county, between Oct. 28 and Nov. 2, 1915, and which boundary line so established was adopted by the board of county commissioners of Oneida county at their January meeting, in 1916, and by the board of county commissioners of Bannock county on April 18, 1916.

**31-139. Owyhee county.** — Owyhee county is described as follows: beginning on the Snake river at the mouth of Owyhee river;

Western boundary. Thence south along the eastern boundary line of the state of Oregon to the northern boundary of the state of Nevada;

Southern boundary. Thence east along the northern boundary of the state of Nevada (1 Ter. Sess. 628) to the thirty-eighth (38th) meridian of longitude west from Washington;

Eastern boundary. Thence north along the said meridian to the south boundary of township 7 south range 12 east. Thence west along the south boundary of township 7 south ranges 12, 11, 10 and 9 east to the southwest corner of township 7 south range 9 east. Thence north along the west boundary of township 7 south range 9 east to the northwest corner of said township. Thence east to the southwest corner of township 6 south range 9 east. Thence north along the west boundary of said township to the Snake river;

Northern boundary. Thence down the channel of the Snake river in a westerly direction to the mouth of the Owyhee river, the place of beginning. County seat — Murphy. [Compiled and reen. C.L. 3:36; C.S., § 43; I.C.A., § 30-139; am. 1999, ch. 35, § 1, p. 72.]

## STATUTORY NOTES

**Compiler's Notes.** — County created, act approved Dec. 31, 1863, 1 T. Sess. 624; Oneida county created, act approved Jan. 22, 1864, 1 T. Sess. 625; boundaries redefined and county seat located at Ruby City, act approved Feb. 4, 1864, 1 T. Sess. 628; county seat located at Silver City, act approved Jan. 2, 1867, 4 T. Sess. 130; boundaries between Owyhee and Oneida counties defined, act approved Jan. 2, 1871, 6 T. Sess. 54; Cassia county created from, act approved Feb. 20, 1879, 10 T. Sess. 43; see act amending same, in effect Feb. 9, 1891, 11 T. Sess. 339; law defining boundaries and locating county seat reen. R.C., § 23t.

**Boundary Change Affecting Above Section:**

*Election of 1930.* By S.L. 1929, ch. 47, electors residing in the following described territory were authorized to vote, at the general election in November, 1930, on question of whether such territory should be detached from Owyhee county and added to Elmore county:

"Commencing at a point where the west boundary line of township 6 south, range 9 east, Boise meridian, intersects the center line of Snake river, and running thence south along the west boundary line of township 6

south, range 9 east, Boise meridian, to the southwest corner of said township 6 south, range 9 east, Boise meridian, thence west to the northwest corner of township 7 south, range 9 east, Boise meridian, and thence south along the west boundary of township 7 south, range 9 east, Boise meridian, to the southwest corner of township 7 south, range 9 east, Boise meridian, thence east along the south boundary line of township 7 south, ranges 9, 10, 11 and 12 east, to the easterly boundary line of Owyhee county, thence north along the easterly boundary line of Owyhee county to a point where said boundary intersects the center line of Snake river, thence westerly, northwesterly, southwesterly and westerly along the center line of Snake river to the place of beginning."

Said election was carried in favor of the proposed change. Hence the boundaries of Owyhee county, as given in the above section, should be modified accordingly.

Session Laws 1927, ch. 47, also provided for adjustment of liabilities between the two counties and for transfer of records, litigation, etc., from Owyhee County to Elmore County.

**Effective Dates.** — Section 2 of S.L. 1999, ch. 35 declared an emergency. Approved March 3, 1999.

**31-140. Payette county.** — Payette county is described as follows: beginning at the intersection of the north line of township nine (9) north, range five (5) west, with the west line of the state of Idaho, said intersection being the southwest corner of Washington county;

Northern boundary. Thence east a distance of twenty-two (22) miles, more or less, to the northwest corner of section three (3), township nine (9) north, range one (1) west;

Eastern boundary. Thence south on section line six (6) miles, to the southeast corner of section thirty-three (33), said township and range; thence west on the township line between townships eight (8) and nine (9) north, four (4) miles to the northwest corner of section one (1), township eight (8) north, range two (2) west; thence south on section line four (4) miles, to the southwest corner of section twenty-four (24), said township and range; thence west on section line two (2) miles, to the northwest corner of section twenty-seven (27), said township and range; thence south on section line two (2) miles, to the southeast corner of section thirty-three (33), said township and range; thence west on township line between townships seven (7) and eight (8), seven (7) miles, to the southwest corner of section thirty-three (33), township eight (8) north, range three (3) west; thence south on section line twelve (12) miles, to the southwest corner of section thirty-three (33), township six (6) north, range three (3) west;

Southern boundary. Thence west on township line between townships five (5) and six (6), two (2) miles to the southwest corner of section thirty-one (31), township six (6) north, range three (3) west; thence south on range line



between ranges three (3) and four (4), one-half ( $\frac{1}{2}$ ) mile to the east quarter corner of section one (1), township five (5) north, range four (4) west; thence west along the center line of sections one (1) and two (2), said township and range, two (2) miles to the east quarter corner of section three (3), said township and range; thence south along the section line one-half ( $\frac{1}{2}$ ) mile, to the southeast corner of section three (3), said township and range; thence west along the section line three (3) miles, to the southwest corner of section five (5), said township and range; thence north along the section line one (1) mile, to the northwest corner of section five (5), said township and range; thence west along the township line between townships five (5) and six (6) north, two (2) miles, to the southwest corner of section thirty-six (36), township six (6) north, range five (5) west; thence north along the section line one (1) mile, to the northwest corner of section thirty-six (36), said township and range; thence west along the section line one (1) mile, to the southwest corner of section twenty-six (26), said township and range; thence north along the section line one (1) mile, to the southwest corner of section twenty-three (23), said township and range; thence west along the section line two (2) miles, to the southwest corner of section twenty-one (21), said township and range; thence north along the section line three (3) miles, to the northwest corner of section nine (9), said township and range; thence west along the section line one and one-half ( $1\frac{1}{2}$ ) miles, more or less, to an intersection with the west line of the state of Idaho;

Western boundary. Thence in a northerly direction, following the said west boundary line of the state of Idaho, to the point of beginning.

County seat — Payette. [Compiled and reen. C.L. 3:37; C.S., § 44; I.C.A., § 30-140.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Canyon county and county seat located at Payette (enabling act), act approved Feb. 28, 1917, S.L. 1917, ch. 11, p. 13; creation of

county approved at special election May 11, 1917, records in office of county recorder of Canyon county.

**31-141. Power county.** — Power county is described as follows: beginning at the northwest corner of section thirty-one (31), township six (6) south, range thirty (30) east; thence east along the section line between sections thirty-one (31) and thirty (30), township and range aforesaid, and an extension thereof to the point where such extended line intersects with the center of the west channel of Snake river; running thence up the center of the west channel of Snake river, upon and along the boundary line of Bingham county, to the point in the main channel of said river, where the same divides, forming the east and west branches thereof; thence southerly down the center of the east branch of Snake river to the point of intersection of the center line of said east branch with an extension of the center line of the Portneuf river in section seventeen (17), township six (6) south, range thirty-two (32) east; thence up the Portneuf river, to the intersection of the Portneuf river with the west boundary line of section eight (8), township six (6) south, range thirty-four (34) east, Boise meridian; thence south four and



one-quarter ( $4\frac{1}{4}$ ) miles to the southeast corner of section thirty-one (31), township six (6) south, range thirty-four (34) east, Boise meridian; thence west to the northeast corner of section six (6), township seven (7) south, range thirty-four (34) east, Boise meridian; thence south four (4) miles to the southeast corner of section nineteen (19); thence east one (1) mile to the northeast corner of section twenty-nine (29); thence south four (4) miles to the southeast corner of section eight (8), township eight (8) south, range thirty-four (34) east, Boise meridian; thence east two (2) miles to the northeast corner of section fifteen (15); thence south two and one-half ( $2\frac{1}{2}$ ) miles to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-seven (27); thence east one (1) mile to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty-six (26); thence south one and one-half ( $1\frac{1}{2}$ ) miles to the southeast corner of section thirty-five (35), township eight (8) south, range thirty-four (34) east, Boise meridian; thence east one (1) mile to the northeast corner of section one (1), township nine (9) south, range thirty-four (34) east, Boise meridian; thence south two (2) miles to the southeast corner of section twelve (12); thence east two (2) miles to the northeast corner of section seventeen (17), township nine (9) south, range thirty-five (35) east, Boise meridian; thence south one and one-half ( $1\frac{1}{2}$ ) miles to the east quarter ( $E\frac{1}{4}$ ) corner of section twenty (20); thence west one-half ( $\frac{1}{2}$ ) mile to the center of section twenty (20); thence south two and one-half ( $2\frac{1}{2}$ ) miles to the south quarter ( $S\frac{1}{4}$ ) corner of section thirty-two (32), township nine (9) south, range thirty-five (35) east, Boise meridian; thence east to the northeast corner of section five (5), township ten (10) south, range thirty-five (35) east, Boise meridian; thence south one and one-quarter ( $1\frac{1}{4}$ ) miles to the southeast corner of the northeast quarter ( $NE\frac{1}{4}$ ) of the northeast quarter ( $NE\frac{1}{4}$ ) of section eight (8); thence west one-quarter ( $\frac{1}{4}$ ) mile; thence south one-quarter ( $\frac{1}{4}$ ) mile; thence west one and one-quarter ( $1\frac{1}{4}$ ) miles; thence south three-quarters ( $\frac{3}{4}$ ) of a mile; thence west one-quarter ( $\frac{1}{4}$ ) mile to the southwest corner of lot one (1) of section eighteen (18), township ten (10) south, range thirty-five (35) east, Boise meridian; thence south on the range line three and three-quarter ( $3\frac{3}{4}$ ) miles to the southwest corner of township ten (10) south, range thirty-five (35) east, Boise meridian; thence west along and upon the south line of said township ten (10) (1913, ch. 6, § 2, pp. 31, 32), to a point a distance of two (2) miles east from the southeast corner of township ten (10) south, range thirty-three (33) east; thence south to a point where the line thus drawn intersects the line between townships eleven (11) and twelve (12) south, range thirty-four (34) east; thence west along and upon the line between townships eleven (11) and twelve (12) south (1915, ch. 132, § 2, p. 288), to the southeast corner of township eleven (11) south, range thirty-two (32) east; thence south upon the township line to the southeast corner of township twelve (12) south, range thirty-two (32) east; thence west upon and along the southern line of said township twelve (12), to the southwest corner of township twelve (12) south, range thirty (30) east; thence north upon the range line between ranges twenty-nine (29) and thirty (30) east, to the southwest corner of township nine (9) south, range thirty (30) east; thence west along and upon the south line of township nine (9) south, to the southwest corner of section thirty-four (34), township nine

(9) south, range twenty-eight (28) east; thence north upon and along the line between sections thirty-three (33) and thirty-four (34), township nine (9) south, range twenty-eight (28) east, and an extension thereof to the point where said line so extended intersects the center of the main channel of Snake river; thence down the center of the main channel of Snake river to the point of intersection with the range line between ranges twenty-seven (27) and twenty-eight (28) east; thence north along and upon said range line to the northwest corner of township nine (9) south, range twenty-eight (28) east; thence east upon and along the north line of said township nine (9) south, to the northeast corner of section four (4), township nine (9) south, range twenty-eight (28) east; thence in a northerly direction along and upon the section line which, when surveyed, will be between sections thirty-three (33) and thirty-four (34), township eight (8) south, range twenty-eight (28) east, and an extension of such line to the point where such extended line will intersect with the township line which, when surveyed, will be the township line between townships seven (7) and eight (8) south, range twenty-eight (28) east; thence west upon the township line to a point which when surveyed, will be the southwest corner of township seven (7) south, range twenty-eight (28) east; thence north along and upon the range line which, when surveyed, will be the range line between ranges twenty-seven (27) and twenty-eight (28) east, to a point which will be, when surveyed and established, the northwest corner of township four (4) south, range twenty-eight (28) east; thence east along and upon the line which will be, when surveyed, the north line of said township four (4) south, to the northwest corner of township four (4) south, range thirty (30) east; thence south along the range line, the same being the western boundary line of Bingham county, to the northwest corner of section thirty-one (31), township six (6) south, range thirty (30) east, the point of beginning (1913, ch. 6, § 2, pp. 32, 33). [Compiled and reen. C.L. 3:38; C.S., § 45; am. 1927, ch. 256, § 5, p. 431; I.C.A., § 30-141.]

#### STATUTORY NOTES

**Cross References.** — Authorization of survey to establish new boundary between Bannock and Power counties, see note, § 31-105.

**Compiler's Notes.** — County created from portions of Oneida, Bingham, Blaine, and Cassia counties, and county seat located at American Falls, act approved Jan. 30, 1913, S.L. 1913, ch. 6, p. 30; electors residing in

portion of Oneida county authorized to determine, at general election to be held in November, 1916, whether said territory should be cut off from Oneida county and annexed to Power county, act approved Mar. 15, 1915, S.L. 1915, ch. 132, p. 287; at general election, Nov. 7, 1916, annexation to Power county approved and territory annexed, records in office of county recorder.

**31-142. Shoshone county.** — Shoshone county is described as follows: beginning at a point where the township line between townships forty-one (41) and forty-two (42) north, intersects the western boundary of the state of Montana;

Eastern boundary. Thence in a northerly direction along the said boundary and with the Bitter Root range of mountains until the said range turns in a westerly direction and is called Coeur d'Alene.

Northern boundary. Thence with the said Coeur d'Alene range of mountains in a westerly direction until a point is attained north of the mouth of the North Fork of the Clearwater river;

Western boundary. Thence south to the township line between townships forty-one (41) and forty-two (42) north;

Southern boundary. Thence east on the said township line to the intersection of the same with the boundary line of the state of Montana, the place of beginning.

County seat — Wallace. [Compiled and reen. C.L. 3:39; C.S., § 46; I.C.A., § 30-142.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created, act approved Feb. 4, 1864, 1 T. Sess. 628; see act defining boundary of Idaho county, approved Mar. 2, 1891, 1890-1891, p. 117; Clearwater county created, including a portion of, act approved Mar. 21, 1901, S.L. 1901, p. 209, said act declared void, *Holmberg v. Jones*, 7 Idaho 752, 65 P. 563 (1901); electors residing in portion of Shoshone county authorized to determine, at next general election, whether

said territory should be cut off from Shoshone county, and annexed to Nez Perce county, act approved Mar. 10, 1903, S.L. 1903, p. 204; at general election, Nov. 8, 1904, annexation to Nez Perce county approved and territory annexed, records in office of county recorder; law defining boundaries and locating county seat, reen. R.C., § 23u; boundaries redefined, act approved Mar. 11, 1909, S.L. 1909, p. 318; C.S., § 46.

**31-143. Teton county.** — Teton county is described as follows: beginning at a point on the northern boundary line of Bonneville county, the said point being two (2) miles east of the range line, which, when surveyed, will be between ranges forty-two (42) and forty-three (43) east;

Southern boundary. Thence easterly and southerly on the northern boundary line of Bonneville county as now established, to a point where said boundary line intersects the boundary line dividing the states of Idaho and Wyoming;

Eastern boundary. Thence north along the boundary line between the states of Idaho and Wyoming, to a point where said dividing line intersects Bitch creek;

Northern boundary. Thence westerly and down the center of said Bitch creek, to a point where said Bitch creek intersects and runs into the main channel of the Teton river, and to the center of said main channel; thence down the said main channel of the said Teton river, to a point where the same intersects the section line between sections sixteen (16) and seventeen (17), township seven (7) north, range forty-three (43) east;

Western boundary. Thence south along said line to the place of beginning.

County seat — Driggs. [Compiled and reen. C.L. 3:40; C.S., § 47; I.C.A., § 30-143.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Madison county and temporary county seat located at Driggs, act approved Jan. 26, 1915,

S.L. 1915, ch. 8, p. 29; at general election, Nov. 7, 1916, permanent county seat located at Driggs, records in office of county recorder.



**31-144. Twin Falls county.** — Twin Falls county is described as follows: beginning with the intersection of the middle of the channel of the Snake river with the north and south center line of section twenty-eight (28), township ten (10) south, range twenty-one (21) east;

Eastern boundary. Thence south on said center line of section twenty-eight (28), to the point of intersection of the north line of the right of way of the Minidoka & Southwestern Railroad Company, which point is one hundred (100) feet distant, at right angles, from the center of the main track of the line of road of said railroad company as the same is now located; thence in a southwesterly direction along the north line of said railroad right of way, to a point where said line intersects the south line of the canal right of way of the Twin Falls Land & Water Company, which point of intersection is one hundred (100) feet distant, at right angles, from the center line of the main canal of said Twin Falls Land & Water company; thence south to the south line of section thirty-six (36), township ten (10) south, range twenty (20) east; thence west to the southwest corner of section thirty-six (36); thence south on the section line to the south line of township eleven (11); thence west to the southeast corner of township eleven (11) south, range eighteen (18) east; thence south on the range line to the south line of the state of Idaho;

Southern boundary. Thence west along the south line of the state of Idaho to the thirty-eighth (38th) meridian of longitude west from Washington;

Western boundary. Thence north along said meridian to the intersection of the center of the main channel of Snake river;

Northern boundary. Thence up the center of the main channel of Snake river to the point of beginning.

County seat — Twin Falls. [Compiled and reen. C.L. 3:41; C.S., § 48; I.C.A., § 30-144.]

#### STATUTORY NOTES

**Compiler's Notes.** — County created from Cassia county and county seat located at Twin Falls, act approved Feb. 21, 1907, S.L. 1907, p. 40; law defining boundaries and locating county seat reen. R.C., § 23w, which should have been § 23v (obvious error).

**31-145. Valley county.** — Valley county is described as follows: beginning at the southwest corner of section thirty-four (34), township ten (10) north, range two (2) east, on the second (2d) standard parallel north;

Southern boundary. Thence east along the said second (2d) standard parallel, five (5) miles to the center of the North Fork of Payette river; thence northerly along the river to the intersection with the line between townships ten (10) and eleven (11) north; thence east to the ridge dividing the waters of the Salmon and Payette rivers; thence northeasterly along the said ridge and along the ridge dividing Bear Valley creek and Cape Horn creek, to the head of the Middle Fork of the Salmon river;

Eastern boundary. Thence northerly along the said river to the intersection of the fifth (5th) standard parallel north;

Northern boundary. Thence west to the divide separating the waters of the Salmon and Payette rivers;

Western boundary. Thence westerly and southerly along the said divide and the divide between Payette and Weiser rivers, to the line between townships thirteen (13) and fourteen (14) north; thence east to the southwest corner of township fourteen (14) north, range three (3) east; thence south twelve (12) miles to the southwest corner of township twelve (12) north, range three (3) east; thence west three (3) miles to the northwest corner of section three (3), township eleven (11) north, range two (2) east; thence south twelve (12) miles, to the place of beginning.

County seat — Cascade. [Compiled and reen. C.L. 3:42; C.S., § 49; I.C.A., § 30-145.]

### STATUTORY NOTES

**Compiler's Notes.** — County created from Boise and Idaho counties and temporary county seat located at Cascade. Location of permanent county seat at Cascade decided at general election in 1918, act approved Feb. 26, 1917, S.L. 1917, ch. 99, p. 360; electors

residing in certain territory of Idaho county authorized to determine, at general election held in November, 1920, whether such territory should be detached from Idaho county and annexed to Valley county, 1919, ch. 101, p. 366.

**31-146. Washington county.** — Washington county is described as follows: beginning at a point on the boundary line between the states of Idaho and Oregon, the same being the middle of the center channel of Snake river, three thousand nine hundred sixty (3,960) feet in a southwesterly direction from the mouth of Wildhorse river;

Northern boundary. Thence in an easterly direction fifteen and one-half ( $15\frac{1}{2}$ ) miles, to a point one-half ( $\frac{1}{2}$ ) mile east of the west quarter ( $W\frac{1}{4}$ ) corner of section six (6), township seventeen (17) north, range two (2) west; thence south about twelve (12) miles, to the intersection of said line with Cow creek; thence southeast down the center line of Cow creek to its confluence with the Weiser river; thence south across the Weiser river to a point five hundred (500) feet east of the north quarter ( $N\frac{1}{4}$ ) corner of section twenty-nine (29), township fifteen (15) north, range two (2) west; thence east about three and three-quarters ( $3\frac{3}{4}$ ) miles, to a point one thousand three hundred twenty (1,320) feet east of the northwest corner of section twenty-five (25), said township and range; thence south eight and one-half ( $8\frac{1}{2}$ ) miles, to a point one thousand three hundred twenty (1,320) feet east of the west quarter ( $W\frac{1}{4}$ ) corner of section one (1), township thirteen (13) north, range two (2) west; thence in a southeasterly direction six and one-half ( $6\frac{1}{2}$ ) miles, to a point one thousand three hundred twenty (1,320) feet south and one thousand three hundred twenty (1,320) feet east of the west quarter ( $W\frac{1}{4}$ ) corner of section twenty-four (24), township thirteen (13) north, range one (1) west; thence east (1911, ch. 31, § 2, p. 67) to the summit of the dividing range between the waters of Crane creek on the west and Squaw creek on the east;

Eastern boundary. Thence southerly along the summit of said dividing range to the intersection of said dividing ridge with the second (2d) standard parallel north (R.C., § 23f);

Southern boundary. Thence west along said second (2d) standard parallel to its intersection with the Snake river;

Western boundary. Thence down the main channel of Snake river, to the place of beginning (R.C., § 23w).

County seat — Weiser. [Compiled and reen. C.L. 3:43; C.S., § 50; I.C.A., § 30-146.]

### STATUTORY NOTES

**Cross References.** — Adams County, creation and formation from Washington County, boundaries, § 31-104.

**Compiler's Notes.** — County created from Ada and Idaho counties, act approved Feb. 20, 1879, 10 T. Sess. 40; boundaries redefined, act approved Feb. 11, 1891, 1890-1891, p. 41; boundaries redefined, act approved Feb. 23, 1895, S.L. 1895, p. 21; reen., act approved Feb. 2, 1899, S.L. 1899, p. 22; see act defining boundary of Idaho county, approved Feb. 2,

1899, S.L. 1899, p. 79; boundaries redefined, act approved Feb. 27, 1905, S.L. 1905, p. 303; law defining boundaries and locating county seat reen. R.C., § 23w; Adams county created from, act approved Mar. 3, 1911, S.L. 1911, ch. 31, p. 67. "In an easterly direction" substituted in Compiled Laws for "south and in a southeasterly direction," found in 1911, ch. 31, p. 67, § 2, lines 7 and 8, to correct obvious error.

## CHAPTER 2

### REMOVAL OF COUNTY SEATS AND CHANGE OF COUNTY BOUNDARIES

#### SECTION.

- 31-201. Time for holding county seat election.
- 31-202. Petition for removal.
- 31-203. Petition for removal — How signed.
- 31-204. Petition open to inspection.
- 31-205. Contesting right to sign petition.
- 31-206. Procedure in case of contest.
- 31-207. Contests have precedence — Decision of district court final.

#### SECTION.

- 31-208. Voting for removal of county seat.
- 31-209. Challenging voters.
- 31-210. Canvass of returns.
- 31-211. Result of vote.
- 31-212. Changing county boundaries.
- 31-213. Conduct of election.
- 31-214. Form of ballot.

**31-201. Time for holding county seat election.** — All elections for the removal of county seats shall be held at the same time and place at which general elections are held. [1890-1891, p. 57, § 118; reen. 1899, p. 33, § 105; reen. R.C. & C.L., § 466; C.S., § 650; I.C.A., § 30-201.]

### STATUTORY NOTES

**Cross References.** — Election contests, jurisdiction to hear, § 34-2005.

Emergency relocation of seat of government, §§ 67-102 — 67-107.

Question of removal of county seats to be

presented not more than once in six years, Const., art. 18, § 2.

Time for holding general elections, §§ 34-617 — 34-624.

### RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 31 et seq.

**C.J.S.** — 20 C.J.S., Counties, § 19 et seq.

**31-202. Petition for removal.** — Public notice shall be given of the intention to circulate a petition praying for the removal of the county seat of any county from its then present location to some other point within said county, and in said petition designated, at least ten (10) days before the same is circulated, by publication in some newspaper printed in the county



(if there be one), and by posting three (3) printed notices in three (3) public places at the county seat, and a like number at the place to which the county seat is proposed to be removed, in which notices the intent of said petition shall be set forth; and all signers to such petition or petitions shall be void and stricken from such petition if procured six (6) months before the first day of the term of court at which the application is to be made; and whenever such petition or petitions, addressed to the district court of such county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, equal in number to a majority of all votes cast at the last general election therein, and shall be filed in the office of the clerk of the district court of said county, not less than twenty (20) nor more than forty (40) days before the first day of the term of said court next preceding the next general election, unless said term commences after the first day of October, then, in such case, the next preceding term. Such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point as hereinafter provided, as the point to which it is proposed to remove the county seat of such county. [1890-1891, p. 57, § 119; reen. 1899, p. 33, § 106; reen. R.C. & C.L., § 467; C.S., § 651; I.C.A., § 30-202.]

### STATUTORY NOTES

**Cross References.** — Publication of notices, § 60-101 et seq. Removal of county seats, Const., art. 18, § 2.

### JUDICIAL DECISIONS

#### ANALYSIS

Number of petitions.  
Qualifications of signers.  
Withdrawing names.

#### Number of Petitions.

Several petitions may be presented at one time, and court should consider all, and determine which, if any, contains a majority of the qualified electors of county. *Lippincott v. Carpenter*, 22 Idaho 675, 127 P. 557 (1912).

#### Qualifications of Signers.

Signers of petition for removal of county seat need not be registered voters, but merely persons who are qualified to register as voters. *Wilson v. Bartlett*, 7 Idaho 269, 62 P. 415 (1900).

When petition is presented to court for removal of county seat and all the signers state over their signatures that they are qualified electors of such county, petitioners make prima facie case, and no further evidence of the qualifications of such signers is required unless a contestant appears and enters his

contest. If specifications in contestant's affidavit raise no valid objection to qualifications of any of the signers of petition, court is justified in finding, without further proof, that all of the signers of said petition are qualified electors. *Wilson v. Bartlett*, 7 Idaho 271, 62 P. 416 (1900).

In this section legislature has declared what evidence makes out a prima facie case in carrying out the provision of Const., art. 18, § 2, that petition must be that "of a majority of the qualified voters of the county." *Lippincott v. Carpenter*, 22 Idaho 675, 127 P. 557 (1912).

#### Withdrawing Names.

Names may be withdrawn from petition at any time prior to its submission to court. *Lippincott v. Carpenter*, 22 Idaho 675, 127 P. 557 (1912).

**31-203. Petition for removal — How signed.** — Each petitioner signing such petition shall write, or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city; or, if he does not reside in a city, then the name of the precinct in which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter at general elections. [1890-1891, p. 57, § 120; reen. 1899, p. 33, § 107; reen. R.C. & C.L., § 468; C.S., § 652; I.C.A., § 30-203.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of voters, Const., art. 6, § 2; § 34-402.

**31-204. Petition open to inspection.** — Said petition or petitions shall, after they are filed in the office of the clerk of the district court of the county be open to the inspection of any and all citizens of the county, but shall not be removed therefrom. [1890-1891, p. 57, § 121; reen. 1899, p. 33, § 108; am. R.C. & C.L., § 469; C.S., § 653; I.C.A., § 30-204.]

**31-205. Contesting right to sign petition.** — Any citizen and legal voter at general elections in said county may contest the right of any person whose name is subscribed to said petition, to sign such petition under this chapter, and shall have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe are fictitious: provided, he shall, ten (10) days before the first day of the term of said court, file in the office of the clerk of the district court of such county a list of the names of the persons whose right to sign said petition he is desirous of contesting, together with his affidavit indorsed thereon, that he has good reason to believe, and does verily believe, that such persons named in said list are not legal voters of such county and had no right in law to sign such petition; and shall also file in the office of said clerk, ten (10) days before said term of said court, a list of such names as he has reason to believe are fictitious, together with his affidavit, that he has good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said lists. [1890-1891, p. 57, § 122; reen. 1899, p. 33, § 109; reen. R.C. & C.L., § 470; C.S., § 654; I.C.A., § 30-205.]

#### JUDICIAL DECISIONS

**Affidavit of Contestant.**

Affidavit of contestant must show that list of names that he desires to contest, if stricken from petition, would reduce the number of names on petition to less than the number

required by law; if it does not, trial court should deny the contest and strike affidavit from its files. *Wilson v. Bartlett*, 7 Idaho 269, 62 P. 416 (1900).

**31-206. Procedure in case of contest.** — It shall be the duty of said court, on the first day of and during said term of court, to hear all evidence for and against said petition or petitions as to the lists of names filed in said

court under this chapter, and to strike from such petition or petitions all names proved by competent evidence to be fictitious, and the names of persons having no legal right to sign the same under this chapter. In case there shall be no contest, or if the court finds, after striking from said petition or petitions all names proved to be fictitious, and all names not legally signed thereto, that it still contains the number of names of legal voters required by this chapter, the court shall order said election according to the prayer of said petition and subject to the provisions of section 34-106, Idaho Code. In case of a contest to said petition or petitions, it shall be the duty of the clerk of said court, on request of the persons contesting any petition under the provisions of this chapter, to issue subpoenas for such witnesses as said persons shall name; and it shall be the duty of said clerk, on request of any legal voter of the county for the purpose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name. Said subpoenas to be made returnable to the term of court at which such contest will be made. [1890-1891, p. 57, § 123; reen. 1899, p. 33, § 110; am. R.C. & C.L., § 471; C.S., § 655; I.C.A., § 30-206; am. 1995, ch. 118, § 20, p. 417.]

#### STATUTORY NOTES

**Cross References.** — Subpoenas for witnesses, §§ 9-704, 9-706, 9-708, 9-709.

**31-207. Contests have precedence — Decision of district court final.** — All cases of contest arising upon said petitions or affidavits shall have precedence over all other cases at said term of said court, and shall be heard and determined at said term, and the decision of the court shall be final. [1890-1891, p. 57, § 124; reen. 1899, p. 33, § 111; reen. R.C. & C.L., § 472; C.S., § 656; I.C.A., § 30-207.]

#### JUDICIAL DECISIONS

##### **Right of Appeal.**

This section was not intended to take away the right of appeal in proceedings of this kind, and by the language, “the decision of the court

shall be final,” it was intended to indicate that such decision was in harmony with § 13-201, and appealable. *Wilson v. Bartlett*, 7 Idaho 269, 62 P. 416 (1900).

**31-208. Voting for removal of county seat.** — The voting for the removal of any county seat shall be by ballot, and each ballot shall have printed or written thereon the words stated in section 31-214. Such ballot shall be smaller than the general election ballots, and shall be officially stamped, and there shall be printed or written thereon the words “county seat ballot,” and any elector who is registered as in title 34 provided, and who, in addition to being qualified to vote for county officers, has resided in the county six (6) months and in the precinct ninety (90) days, shall be permitted to vote for or against the removal of the county seat, by handing to one (1) of the judges of election a county seat ballot, at the same time announcing that he is entitled to vote on the question of the removal of the county seat. If the judges of election are of the opinion that the said elector



is entitled to vote on the question of the removal of the county seat, his ballot shall then be deposited in the ballot box, and the clerks of election shall write opposite his name in brackets the words "county seat" or "county division," as the case may be. [1890-1891, p. 57, § 125; reen. 1899, p. 33, § 112; am. R.C. & C.L., § 473; C.S., § 657; I.C.A., § 30-208.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of voters at county seat elections, Const., art. 18, § 2.

**31-209. Challenging voters.** — Any person who offers to vote on the question of the removal of the county seat may be challenged by any person and for any of the reasons allowed for other challenges, and the rules provided for other challenges shall apply to such challenges. [1890-1891, p. 57, § 126; reen. 1899, p. 33, § 113; reen. R.C. & C.L., § 474; C.S., § 658; I.C.A., § 30-209.]

#### STATUTORY NOTES

**Cross References.** — Challenge of electors in general, § 34-1111.

**31-210. Canvass of returns.** — The returns for county seat elections shall be canvassed by the same officers and in the same manner as the returns for county and precinct officers are canvassed, and the result of the vote for the removal of the county seat shall be officially declared by the county board of canvassers in the following manner:

They shall record the total votes cast in each ward or precinct both for and against the proposed removal, upon the book provided for recording the results of the general election. This record shall be made upon a separate page, or pages, of said book, and after the record is complete and the total result known, they shall make a complete copy of such record, certified to by each member of the board. They shall deposit this certificate with the county auditor, who shall, without delay, file the same with the clerk of the district court which authorized the election, and the auditor shall also cause a copy of the certificate to be published in some newspaper of general circulation in the county. [1890-1891, p. 57, § 127; reen. 1899, p. 33, § 114; reen. R.C. & C.L., § 475; C.S., § 659; I.C.A., § 30-210.]

**31-211. Result of vote.** — When the attempt has been made to remove the county seat of any county, as in this chapter provided, and the county board of canvassers have found and declared that two-thirds ( $\frac{2}{3}$ ) of the voters of the county who have voted for or against such removal have voted in favor of such removal, then said county seat of said county is thereby removed to the point named in the petition. [1890-1891, p. 57, § 128; reen. 1899, p. 33, § 115; reen. R.C. & C.L., § 476; C.S., § 660; I.C.A., § 30-211.]

### STATUTORY NOTES

**Cross References.** — Two-thirds affirmative vote required, Const., art. 18, § 2.

**31-212. Changing county boundaries.** — Whenever the boards of county commissioners of affected counties have by joint ordinance provided that a part of an affected county be stricken off from said county and annexed to an adjoining affected county, the provisions of the constitution being complied with, the qualified electors who have resided ninety (90) days next preceding the first general election after the passage of this chapter within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation. If a majority of said electors voting at said election vote in favor of annexation, said territory is then stricken off and annexed, as provided in this chapter: provided, that all the requirements of the constitution have been complied with. If such annexation and change of county boundaries occur, the legislature, at its next regular session, shall redefine the boundaries of the affected counties as set forth in the Idaho Code to conform therewith. The county recorder of the county from which the territory is to be detached may have clearly reproduced by photographing or filming in accordance with the provisions of sections 9-328, 9-329 and 9-330, into permanent records, all instruments, papers and other matters and things relating to or affecting real property in the territory being detached and annexed. When the costs have been determined for the transcribing and indexing of all instruments, documents, records, maps, papers, and all other matters relating to or affecting the property in the territory to be annexed which must be transferred to the annexing county, and the copying and preparing for transfer of all pleadings, court records, and other papers in all court actions and court proceedings to be transferred to annexing county, the board of county commissioners of the county annexing the detached territory shall cause county warrants to be drawn to pay all such costs; said warrants so drawn shall be paid by a tax to be assessed upon all property within the territory being annexed. [1890-1891, p. 57, § 129; reen. 1899, p. 33, § 116; am. R.C. & C.L., § 477; C.S., § 661; I.C.A., § 30-212; am. 1949, ch. 56, § 1, p. 100; am. 1955, ch. 106, § 1, p. 230.]

### STATUTORY NOTES

**Cross References.** — Bond tax levies in new counties and segregated areas, § 31-1904.

Constitutional requirements, Const., art. 18, §§ 3, 4.

County lines and boundaries, surveys to establish, § 31-2705.

Highway districts affected by county division or change of county boundaries, joint district formed, § 40-1602.

Salary provisions applicable to newly-created counties, § 31-3108.

**Compiler's Notes.** — Sections 9-328,

9-329 and 9-330, referred to in this section, were repealed by S.L. 1992, ch. 165, § 1. A new § 9-328, relating to the photographic or digital retention of records, was added by S.L. 1992, ch. 165, § 2.

**Proposed Boundary Changes.** Session Laws 1917, ch. 96 authorized vote at general election in 1918 on question of whether a portion of Bannock county should be detached and added to Franklin county. See note, § 31-123.

Session Laws 1919, ch. 5, §§ 23 — 28 authorized vote at general election in 1920 on

question of whether portion of Caribou county should be added to Bannock county. See compiler's note, § 31-117.

Session Laws 1929, ch. 47 authorized vote at general election in 1930 on question whether portion of Owyhee county should be added to Elmore county. See note, § 31-122.

Session Laws 1931, ch. 63 authorized vote at general election in 1932 on question whether portion of Custer county should be added to Butte county. See compiler's note, § 31-114.

Session Laws 1931, ch. 223 authorized vote at general election in 1932 on question of whether portion of Bannock county should be added to Franklin county. See compiler's note, § 31-105.

Session Laws 1945, ch. 145 conferred authority to vote, at the general election to be held in November, 1946 upon the question whether territory should be detached from Bannock county and added to Franklin county. See note, § 31-105.

Session Laws 1947, ch. 150 authorized vote at general election in 1948 on question of

whether a portion of Ada county should be detached and added to Elmore county. See note to § 31-103.

Session Laws 1947, ch. 247 conferred authority to vote at the general election to be held in November, 1948, upon the question whether territory should be detached from Bannock county and added to Caribou county. See note, § 31-105.

Session Laws 1947, ch. 248 conferred authority to vote at the general election to be held in November, 1948, upon the question whether territory should be detached from Bannock county and added to Caribou county. See note, § 31-105.

Session Laws 1947, ch. 255 conferred authority to vote at the general election to be held in November, 1948, upon the question whether territory should be detached from Bannock county and added to Franklin county. See compiler's note, § 31-105.

**Effective Dates.** — Section 2 of S.L. 1955, ch. 106 declared an emergency. Approved March 11, 1955.

**31-213. Conduct of election.** — The rules and regulations for voting at county seat elections, as provided in this chapter, so far as they apply to ballots, voting, challenging, canvassing the returns and declaring the result, shall apply to elections for the striking off of any part of any county and annexing the same to any adjoining county. [1890-1891, p. 57, § 130; reen. 1899, p. 33, § 117; am. R.C. & C.L., § 478; C.S., § 662; I.C.A., § 30-213.]

**31-214. Form of ballot.** — It shall be the duty of the auditor of the county wherein it is proposed to hold an election for the removal of the county seat, or changing county lines, to cause to be printed separate ballots at the same time and in the same manner as ballots for the general election are printed.

Such separate ballots shall be three (3) inches square, or as near this size as practicable, and on one side there shall be printed the following words:

For removal of the county	) No.
seat to _____	) Yes.
For changing county lines	) No.
	) Yes.

(As the case may be.)

And the auditor shall send an equal number of these special ballots, with the ballots furnished for the general election, to each voting precinct of the county and at the same time. [1890-1891, p. 57, § 131; reen. 1899, p. 33, § 118; reen. R.C. & C.L., § 479; C.S., § 663; I.C.A., § 30-214.]

## JUDICIAL DECISIONS

### Construction.

This statute is still in force and effect in reference to the size, form and manner of

preparation of ballots for county seat removals. *Whitla v. Quarles*, 15 Idaho 604, 98 P. 631 (1908).



## CHAPTER 3

## COUNTY DIVISION — TRANSFER OF RECORDS

## SECTION.

31-301. Auditor and recorder's records.

31-302. Legal effect of transferred records.

31-303. Tax collector's records.

**31-301. Auditor and recorder's records.** — The ex officio auditor and recorder of any county in this state which has heretofore been, or may hereafter be, divided by the legislature shall, upon demand in writing by the ex officio auditor and recorder of any county which has been created, in whole or in part, from the territory of such divided county, deliver to the ex officio auditor and recorder of the county so created, in whole or in part, from such territory, all record books in his custody and control relating solely to persons and property situated in such newly-created county, together with all maps and plats relating to town sites, precincts, school districts, road districts and other municipalities situated wholly within the boundaries of such newly-created county, and the originals of all chattel mortgages relating to personal property within said newly-created county, and also all tax sale certificates and other papers relating wholly to, and covering property located entirely within such newly-created county. At the time of such delivery by the said ex officio auditor and recorder of the divided county, he shall take an itemized receipt from the ex officio auditor and recorder of the newly-created county, and file and keep the same in his office as a part of the records of said divided county. [1913, ch. 19, § 1, p. 89; reen. C.L. 145:1; C.S., § 3756; I.C.A., § 30-301.]

## STATUTORY NOTES

**Cross References.** — Bond tax levies in new counties and segregated areas, § 31-1904.

sion or change of county boundaries, joint district formed, § 40-1602.

Highways districts affected by county divi-

Salary provisions applicable to newly-created counties, § 31-3108.

**31-302. Legal effect of transferred records.** — The book records, plats, chattel mortgages, tax sale certificates and other records, aforesaid, when they shall be delivered to the ex officio auditor and recorder of the newly-created county, shall be deemed to be a part of the records of such newly-created county, and shall be received in evidence with like force and effect as any others of said county. [1913, ch. 19, § 2, p. 89; reen. C.L. 145:2; C.S., § 3757; I.C.A., § 30-302.]

**31-303. Tax collector's records.** — The county tax collector of the divided county shall immediately, after the passage and approval of this chapter, proceed to make and certify to a transcript of so much of the tax rolls of his office as show taxes levied and assessed against persons, firms, associations, corporations, real and personal property in the territory included in the newly-created county, and unpaid at the time this chapter goes into effect, and as soon as such transcript is completed, the same shall

be delivered to the tax collector of the newly-created county and become thenceforth the property of such newly-created county and the official record thereof, with the same force and effect as the original tax roll, and shall be authority for the tax collector of the newly-created county to collect such unpaid taxes, both real and personal, in any manner authorized by law. [1913, ch. 19, § 3, p. 89; reen. C.L. 145:3; C.S., § 3758; I.C.A., § 30-303.]

## CHAPTER 4

### CONSOLIDATION OF COUNTIES

#### SECTION.

- 31-401. Authority for county consolidation.
- 31-402. Time for holding elections to consolidate counties.
- 31-403. Petition for consolidation.
- 31-404. Signing of petition — Qualifications of signers — Petition open to inspection.
- 31-405. Right to contest petition.
- 31-406. Hearing of contest.
- 31-407. Provision for holding election — Notice thereof to be given.
- 31-408. Preparation and form of ballots.

#### SECTION.

- 31-409. Conduct of election.
- 31-410. Who qualified to vote.
- 31-411. Provisions of general election laws made applicable.
- 31-412. Result of vote.
- 31-413. Payment of floating indebtedness — Disposition of bonded debt.
- 31-414. Transfer of records — Sale of property.
- 31-415. Disposition of county moneys.
- 31-416. Transfer of civil, criminal and probate matters.

**31-401. Authority for county consolidation.** — Counties of the state of Idaho as they now exist, or may hereafter be created or exist, may be consolidated as in this act provided. [1933, ch. 135, § 1, p. 206.]

### STATUTORY NOTES

**Cross References.** — Salary provisions applicable to newly-created counties, § 31-3108.

**Compiler's Notes.** — The words "this act" refer to S.L. 1933, ch. 135 which is compiled as §§ 31-401 — 31-416.

**31-402. Time for holding elections to consolidate counties.** — All elections for the consolidation of counties shall be held on the first Tuesday in August in the year general elections are held. [1933, ch. 135, § 2, p. 206; am. 1995, ch. 118, § 21, p. 417.]

### STATUTORY NOTES

**Cross References.** — County lines and boundaries, survey to establish, § 31-2705.

**31-403. Petition for consolidation.** — Not less than ninety (90) days nor more than six (6) months prior to the date specified in section 31-402, Idaho Code, a petition may be circulated in any county praying for the consolidation of such county with another county. Such petition shall be entitled in the district court of the former county, and shall be in substantially the following form:

"The undersigned qualified electors of .... County, State of Idaho, hereby petition the court or judge thereof to order an election to be held on the first Tuesday in August next hereafter to determine whether said .... County

shall be consolidated with .... County (naming the county with which it is desired to consolidate), under the provisions of the law applicable to such elections.”

Such petition may consist of any number of copies required for convenient and rapid circulation and the various copies shall be considered as one (1) petition. If said petition, within the time limits hereinbefore fixed, is signed by a number of qualified electors of the county which it is proposed to consolidate, equal in number to two-thirds ( $\frac{2}{3}$ ) of all votes cast therein at the last general election, such petition shall thereupon, and not later than eighty (80) days prior to said first Tuesday in August, be filed with the clerk of the district court of such county. Such petition shall be deemed a proposal to consolidate said county with the county named therein. [1933, ch. 135, § 3, p. 206; am. 1995, ch. 118, § 22, p. 417.]

**31-404. Signing of petition — Qualifications of signers — Petition open to inspection.** — Each person signing such petition shall write, or cause to be written, opposite his name the name or number of the precinct in which he resides; and no person shall be entitled to sign such petition unless he is, at the time of signing, a qualified elector of the county. Said petition shall, after filing as herein provided, be open to the inspection of the public. [1933, ch. 135, § 4, p. 206.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of electors, § 34-402.

#### JUDICIAL DECISIONS

**Cited in:** Muench v. \*Paine, 94 Idaho 12, 480 P.2d 196 (1971).

**31-405. Right to contest petition.** — Any qualified elector of the county shall have the right to contest the right of any person whose name is subscribed to such petition to file the same, or to contest said petition as to any name or names subscribed thereto which he believes are fictitious: provided, he shall, within ten (10) days after such petition is filed, file in the office of the clerk a list of the names of the persons whose right to sign such petition he is desirous of contesting and/or a list of the names therein which he believes to be fictitious, together with an affidavit attached thereto stating specifically the grounds of his contest. [1933, ch. 135, § 5, p. 206.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of electors, § 34-402.

**31-406. Hearing of contest.** — Said petition, with any such contesting list and affidavits, shall be presented to the court, or to the judge thereof at chambers if the court is not in session, not less than ten (10) nor more than



fifteen (15) days after the petition has been filed with the clerk. If any contest has been filed as herein provided, the court or judge shall set a date for hearing the same at a time not more than ten (10) days later. At the time set the court, or judge at chambers, shall hear all evidence for and against said petition, and shall strike from such petition all names proved by competent evidence to be fictitious and the names of persons having no legal right to sign the same, and also all names not legally signed thereto. In case there shall be no contest, or if the court or judge finds, after striking from said petition all names proved to be fictitious, and all names not legally signed thereto, that the petition still contains the number of qualified signers required by this act, the court or judge shall order an election according to the prayer of the petition. In case of contest, subpoena may be issued as in other cases. All cases of contest arising upon such petitions shall have precedence over all other cases. [1933, ch. 135, § 6, p. 206.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of electors, § 34-402.

**Compiler's Notes.** — For words "this act," see compiler's notes, § 31-401.

**31-407. Provision for holding election — Notice thereof to be given.** — If the court or judge shall order an election, copies of such order, certified by the clerk, shall at once be filed with the county auditor of the county which it is proposed to consolidate, and also with the county auditor of the county with which the consolidation is proposed. The county auditor of each of said counties shall cause a notice of the holding of said election to be published in a newspaper published in his county designating the consolidation proposal to be voted on, the date of the election, the hours during which the polls will be open, and stating that the election will be held at the regular polling places in each precinct. Such notice shall be published at least once a week for two (2) successive weeks. Where published in a weekly newspaper, two (2) successive insertions of such notice shall be sufficient. Where published in a daily newspaper, at least seven (7) days shall elapse between the first and last date of publication. Such publication shall be completed not less than thirty (30) days before such election. The county auditor in each county shall likewise, not less than thirty (30) days before such election, cause a copy of such notice to be posted in a conspicuous place in each precinct in his county and in/or near each post office situated therein. If no newspaper be published in such county, the notice given by posting as herein provided shall be sufficient. [1933, ch. 135, § 7, p. 206.]

#### STATUTORY NOTES

**Cross References.** — Notice by mail, § 60-109A.

Publication of notices, § 60-101 et seq.

**31-408. Preparation and form of ballots.** — It shall be the duty of the county auditor of each of said counties to cause ballots to be printed which ballots shall be three (3) inches square, or as near thereto as practicable,

and on one side shall be printed the following:

“Shall \_\_\_\_\_ County be consolidated with \_\_\_\_\_ County?

☐ Yes

☐ No”

The county auditor in each county shall send the requisite number of ballots to each voting precinct in his county in a reasonable time before the election. All ballots and supplies to be used at such election, and the expenses necessarily incurred in the preparation and conduct of such election, shall be paid out of the county treasury as in the case of general elections. [1933, ch. 135, § 8, p. 206.]

#### STATUTORY NOTES

**Cross References.** — Qualifications of electors, § 34-402.

**31-409. Conduct of election.** — The polls in the several election precincts on the day any such election is held shall be open as provided in chapter 14, title 34, Idaho Code. No adjournments or intermissions whatever shall take place until the polls shall be closed and the votes counted. [1933, ch. 135, § 9, p 206; am. 1995, ch. 118, § 23, p. 417.]

**31-410. Who qualified to vote.** — No person shall be qualified to vote at any such election unless he is a qualified elector of the county and state in which he offers to vote and unless he be duly registered in the precinct where he offers to vote. [1933, ch. 135, § 10, p. 206.]

**31-411. Provisions of general election laws made applicable.** — The provisions of the general election laws relative to the holding of elections, the appointment of judges and clerks of election, the registration of voters, the solicitation of voters at the polls, the manner of conducting elections, the officers and duties thereof at elections, the counting of ballots and making returns of the results, the canvassing of returns, and all other provisions relating to general elections shall apply to elections held under this act so far as they are applicable and consistent with the provisions hereof, the intention of this act being to place the holding of elections for county consolidations under protection and regulation of general laws now in force, as far as possible, adding thereto the special features herein contained. [1933, ch. 135, § 11, p. 206.]

#### STATUTORY NOTES

**Cross References.** — General election laws, § 34-101 et seq.

**Compiler's Notes.** — For words “this act,” see compiler's notes, § 31-401.

**31-412. Result of vote.** — When an election has been held, as in this act provided, and the county board of canvassers in each of said counties have found and declared that two-thirds ( $\frac{2}{3}$ ) of the voters in each county who have voted for or against such consolidation have voted in favor of such

consolidation, then, on and after the second Monday in December next thereafter, said counties are consolidated under the name of the county with which such consolidation was effected, and the county consolidated shall, on and after said date, cease to exist. Where such consolidation occurs, the terms of office of all county officers in the county which has been consolidated shall automatically terminate. [1933, ch. 135, § 12, p. 206.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-401.

**31-413. Payment of floating indebtedness — Disposition of bonded debt.** — The floating indebtedness of the counties so consolidated, existing and owing at the time the consolidation becomes effective, evidenced by warrants, orders, tax anticipation notes or bonds, and claims outstanding and unpaid, and bond interest coupons maturing prior to said date, shall be determined by the respective county auditors of said counties, and the amount and details thereof certified to the board of commissioners of the county with which the consolidation has been effected. All money in the possession or under the control of the treasurer or other officer of the county which has been consolidated (except school district, road district, highway district, city, village and other municipal funds) shall be paid over to the treasurer of the other county and by the latter applied upon said floating indebtedness of the county which has been consolidated. If any balance remains after the payment of such floating indebtedness, such balance shall be apportioned to the current expense fund of the consolidated county. If such money and credits shall be insufficient to pay such floating indebtedness, as aforesaid, such deficiency shall be met, provided for and paid by levy made on the taxable property in the territory of the county which has been consolidated, such levy to be made and to be payable as other levies for the redemption and payment of indebtedness of like character. In like manner, any amount of such floating indebtedness of the county with which the consolidation has been effected, over and above the moneys in the possession or under the control of the treasurer or other officer of such county (except school district, road district, highway district, village, city and other municipal funds) at the time the consolidation becomes effective, shall be met, provided for and paid by levy on the taxable property in the territory of such county as it existed prior to consolidation.

The bonded indebtedness of the respective counties, existing at the time the consolidation becomes effective, shall be met, provided for and paid as if no consolidation had been effected, the taxable property in the territory of each county, as it formerly existed, remaining liable therefor as before; and the same rule shall apply in the case of any refunding issue or issues. [1933, ch. 135, § 13, p. 206.]



STATUTORY NOTES

**Cross References.** — Bond tax levies in new counties and segregated areas, § 31-1904.

Conduct of general elections, § 34-101 et seq.

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

**31-414. Transfer of records — Sale of property.** — Promptly after such consolidation becomes effective, all records, files, proceedings, instruments, documents, bonds, reports, maps, plats, rolls and the like shall be delivered to and taken possession of by the appropriate officer of the county with which the consolidation has been made, and the same shall become a part of the official files and records of such office. All property of the formerly existing county shall become the property of the consolidated county and shall be managed, handled and disposed of as other county property. Any real property and equipment such as court house, jail or hospital, no longer required, may be sold as like county property is sold. [1933, ch. 135, § 14, p. 206.]

STATUTORY NOTES

**Cross References.** — Sale of county property, § 31-808.

**31-415. Disposition of county moneys.** — The county treasurer of the formerly existing county shall turn over to the treasurer of the consolidated county all funds in his official possession or control belonging to municipal or quasi municipal corporations, and the proper record of such transaction shall be made in the office of the county auditor. [1933, ch. 135, § 15, p. 206.]

**31-416. Transfer of civil, criminal and probate matters.** — All civil and criminal actions and special proceedings, and all records and files pertaining thereto, pending in the formerly existing county, shall be transferred to the office of the clerk of the court of the consolidated county, without further charge, likewise all civil and criminal actions and all unsettled estates, pending in the probate court of the formerly existing county, together with all records and files pertaining to the same, shall be transferred to the probate court of the consolidated county, without additional charge. [1933, ch. 135, § 16, p. 206.]

CHAPTER 5

REFUNDING BONDS IN NEW COUNTIES

SECTION.  
31-501. Bonds authorized in new counties to put finances on cash basis.  
31-502. General county bonding provisions applicable.

SECTION.  
31-503. Certificate of determination.  
31-504. Limitation on principal.  
31-505. Interpretation — No repeal.

**31-501. Bonds authorized in new counties to put finances on cash basis.** — The board of county commissioners of any new county which may have been formed, organized or created pursuant to the acts of the legislature of the state of Idaho, approved subsequent to the first day of January, 1911, or which may be hereafter formed, organized or created, may in the exercise of its judgment and discretion when deemed advisable and in the interests and for the benefit of the county, and to enable such county to be placed as near as may be on a cash basis, issue and negotiate coupon bonds at such time and in such manner and upon such terms as are deemed for the best interests of the county, in order to provide funds with which to pay and entirely discharge any part, either on all of the warrant, bonded, floating or other indebtedness or obligations which may have been either assumed or are owing by such new county to the county or counties out of which such new county was formed or the indebtedness incurred by such new county in the transcribing and certifying of records and the preparing of indexes, in the purchase and providing of books, records, furniture, fixtures, office supplies, safes, vaults and a jail, in the employment of accountants and appraisers and for other ordinary and necessary equipment and expense incident to the organization of such new county, or an amount of the then outstanding warrant indebtedness of such new county equal to the amount previously expended by such new county for the purpose or purposes herein above-mentioned, and such bonds shall constitute a legal charge and obligation of the county. [1915, ch. 20, part of § 1, p. 72; reen. C.L. 146:1; C.S., § 3759; I.C.A., § 30-401.]

#### STATUTORY NOTES

**Cross References.** — Bond tax levies in new counties and segregated areas, § 31-1904.

#### JUDICIAL DECISIONS

##### ANALYSIS

Constitutionality.  
Construction.

**Constitutionality.**

This chapter is constitutional; it is general in its terms and not local or special. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

**Construction.**

Under this chapter warrant indebtedness may be extinguished by funding bonds, not-

withstanding provisions of § 63-903 and § 31-1901 as construed in *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914); *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

Method of taking care of the indebtedness provided in this act is not exclusive. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

**31-502. General county bonding provisions applicable.** — All such bonds shall conform to, and provisions be made for their payment in accordance with the provisions of sections 3519, 3522, 3524 and 3526 of the Compiled Statutes of Idaho. [1915, ch. 20, part of § 1, p. 72; reen. C.L. 146:2; C.S., § 3760; I.C.A., § 30-402.]

STATUTORY NOTES

**Compiler's Notes.** — Sections 3522, 3524, and 3526 of the Compiled Statutes were repealed by S.L. 1927, ch. 262, § 12. Section 10 of S.L. 1927, ch. 262 amended C.S., § 3519 (§ 31-1901, herein) to provide that all such bonds should be in the form and issued, sold or exchanged and redeemed in accordance with the municipal bond law.

JUDICIAL DECISIONS

**Cited in:** Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915).

**31-503. Certificate of determination.** — Before the board of county commissioners of a county shall issue bonds under the provisions of this chapter the board must first ascertain and determine that the particular bonded, warrant or other indebtedness of the county, proposed to be retired by the bond issue, constitutes binding and subsisting obligations of the county, and they shall thereupon cause a certificate of determination to be made and entered in and upon the records of said board and the findings of said board shall thereafter be conclusive as a basis for the issuance of such bonds and the levy and collection of taxes for their payment. [1915, ch. 20, part of § 1, p. 72; reen. C.L. 146:3; C.S., § 3761; I.C.A., § 30-403.]

JUDICIAL DECISIONS

**Cited in:** Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915).

**31-504. Limitation on principal.** — No bonds issued pursuant to the provisions of this chapter shall in any wise increase the principal amount of the existing indebtedness of the county. [1915, ch. 20, part of § 1, p. 73; reen. C.L. 146:4; C.S., § 3762; I.C.A., § 30-404.]

JUDICIAL DECISIONS

**Cited in:** Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915).

**31-505. Interpretation — No repeal.** — This chapter shall not in any wise be construed as a repeal of any of the power and authority vested in the board of county commissioners of any new county by act of the legislature particularly relating to such new county. [1915, ch. 20, part of § 1, p. 73; reen. C.L. 146:5; C.S., § 3763; I.C.A., § 30-405.]

JUDICIAL DECISIONS

**Cited in:** Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915).



## CHAPTER 6

## COUNTIES AS BODIES CORPORATE

## SECTION.

31-601. Every county a body corporate.

31-602. Exercise of powers.

31-603. Corporate name.

## SECTION.

31-604. Enumeration of powers.

31-605. Counties not to loan credit.

31-606. [Repealed.]

**31-601. Every county a body corporate.** — Every county is a body politic and corporate, and as such has the powers specified in this title or in other statutes, and such powers as are necessarily implied from those expressed. [1871, p. 76, § 1; R.S., § 1730; reen. R.C. & C.L., § 1898; C.S., § 3396; I.C.A., § 30-501.]

## STATUTORY NOTES

**Cross References.** — Burn seeding areas, boards of county commissioners may create, § 38-505.

Election, §§ 34-617 — 34-624; nominations and primary elections, §§ 34-701 — 34-708A, 34-711 — 34-716; recall elections, § 34-1701 et seq.

Election ballots and supplies, duty to furnish, § 34-901 et seq.

Forest fires, abstract of laws relating to, forwarded to chairmen of county boards, § 38-105.

Joint contracting for services, supplies and capital equipment by political subdivisions, §§ 67-2326 — 67-2333.

Stumpage districts, petition for organization, § 38-1002.

## JUDICIAL DECISIONS

## ANALYSIS

Board of county commissioners.

Districts, organization within county.

Merit system.

Public corporations.

**Board of County Commissioners.**

As the legislative arm of county government, the Board of County Commissioners has both express and implied power to promulgate ordinances, rules and regulations, which, in the judgment of the board, promote the general welfare of the county. *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988).

**Districts, Organization Within County.**

Political subdivision of the state recognized by our constitution as a county is none the less a county because of the organization of a highway district therein. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

**Merit System.**

Rather than prohibiting the county commissioners from instituting a merit system by statute, the legislature has, in fact, invited

counties to enter into agreements with the state personnel commission to provide a merit program for county employees and such an act is a valid legislative exercise of the express power of the county commissioners to promote the general welfare of the county. *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988).

**Public Corporations.**

Counties are true public corporations. *Strickfaden v. Greencreek Hwy Dist.*, 42 Idaho 738, 248 P. 456 (1996).

**Cited in:** Department of Emp. v. Ada County Fair Bd., 96 Idaho 591, 532 P.2d 933 (1974); *Bissett v. Unnamed Members of Political Compact*, 111 Idaho 863, 727 P.2d 1291 (Ct. App. 1986); *Union Pac. R.R. v. Idaho*, 654 F. Supp. 1236 (D. Idaho 1987).

## OPINIONS OF ATTORNEY GENERAL

A board of county commissioners presently has no statutory authority to adjust the levies

of other independent taxing districts and if such authority is impliedly granted by the

proposed One Percent Initiative, then each board will become the tax czar in its county. OAG 91-9.

RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 2 et seq., 107 et seq. **C.J.S.** — 20 C.J.S., Counties, §§ 34-44, 150 et seq.

**31-602. Exercise of powers.** — Its powers can only be exercised by the board of county commissioners, or by agents and officers acting under their authority, or authority of law. [R.S., § 1731; reen. R.C. & C.L., § 1899; C.S., § 3397; I.C.A., § 30-502.]

STATUTORY NOTES

**Cross References.** — Contracts for public benefit, authority to enter, § 31-866. Highways, duty of county to maintain, § 40-501.

**31-603. Corporate name.** — The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property and duties. [R.S., § 1732; reen. R.C. & C.L., § 1900; C.S., § 3398; I.C.A., § 30-503.]

JUDICIAL DECISIONS

**Action on Bond.** Action on a bond in which a county is party in interest, for whose benefit action is brought, should be brought in name of county. United States ex rel. McDonald v. Shoup, 2 Idaho (Hasb.) 493, 21 P. 656 (1889).

**31-604. Enumeration of powers.** — It has power:

1. To sue and be sued.
2. To purchase and hold lands.
3. To make such contracts, and purchase and hold such personal property, as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.
6. Such other and further authority as may be necessary to effectively carry out the duties imposed on it by the provisions of the Idaho Code and constitution. [1871, p. 76, § 1; R.S., § 1733; reen. R.C. & C.L., § 1901; C.S., § 3399; I.C.A., § 30-504; am. 1989, ch. 74, § 1, p. 128; am. 1990, ch. 123, § 1, p. 293.]

STATUTORY NOTES

**Cross References.** — County fish hatchery, special levy for, § 36-1702. Local police regulations, making and enforcing, Const., art. 12, § 2. Stockholder in corporation, county forbidden to become, Const., art. 12, § 4.

**Effective Dates.** — Section 4 of S.L. 1990, ch. 123 declared an emergency. Approved March 23, 1990.

## JUDICIAL DECISIONS

### ANALYSIS

Actions against.

Commissioners.

—Powers.

——To contract.

———Void.

—Liabilities.

——Arbitration.

—Failure to fence.

—To state.

——Purchase land for highway purposes.

### Actions Against.

County must be sued in its corporate name. *United States ex rel. McDonald v. Shoup*, 2 Idaho (Hasb.) 493, 21 P. 656 (1889).

County code provisions authorizing appeal of county personnel decisions to the local court of general jurisdiction were not police or sanitary regulations of the type a county was empowered to enact. *Gibson v. Ada County Sheriff's Dep't*, 139 Idaho 5, 72 P.3d 845 (2003).

### Commissioners.

#### —Powers.

County commissioners have no power or authority to require any index to be made and kept by recorder at the expense of the county, other than such as is authorized by law. *Reilly v. Board of County Comm'rs*, 29 Idaho 212, 158 P. 322 (1916).

Under the provisions of this section, a county is not prohibited from purchasing property at execution sale under judgment in its favor. *Evans v. Power County*, 50 Idaho 690, 1 P.2d 614 (1931).

#### ——To Contract.

A county, under its power to construct a highway, may contract to construct a fence along the proposed highway and if it does so, and breaches the contract by failure to construct the fence, it is liable in damages and this section authorizes an action for their recovery. *Bel v. Benewah County*, 60 Idaho 791, 97 P.2d 397 (1939).

#### ———Void.

Contract under which trustee was to manage property purchased by him at execution sale of county and other judgment creditors, and which provided that parties to contract could order sale at time and for price upon which all parties might agree was void since there was an unauthorized delegation of the discretionary powers of the county commis-

sioners. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1932).

#### —Liabilities.

#### ———Arbitration.

The power to submit to arbitration arises out of the power of a county to contract, and to sue and be sued; Idaho counties are given broad powers under this section. *Bingham County Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 665 P.2d 1046 (1983), *aff'd*, 108 Idaho 181, 697 P.2d 1195 (1985).

#### —Failure to Fence.

A grantor whose crops were destroyed by trespassing stock as a result of the county's breach of contract, under which county was required to construct fences along lands purchased from grantor for purpose of public highway, could, under the statute, maintain an action for recovery of the damages sustained, where the public convenience made the construction of the highway necessary, and the highway could not have been constructed by the county without purchasing or condemning the lands. *Bel v. Benewah County*, 60 Idaho 791, 97 P.2d 397 (1939).

#### —To State.

County held not liable to state for uncollected state taxes levied upon lands which, in default of payment, were sold at delinquent tax sale, and bid in by county, until such lands were redeemed or otherwise disposed of by the county. *State v. Ada County*, 7 Idaho 261, 62 P. 457 (1900).

#### ——Purchase Land for Highway Purposes.

Benewah county had plenary power to purchase by contract right-of-way for purpose of constructing a public highway necessary for the public convenience. *Bel v. Benewah County*, 60 Idaho 791, 97 P.2d 397 (1939).

**Cited in:** *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972); *Bissett v.*



Unnamed Members of Political Compact, 111 Idaho 863, 727 P.2d 1291 (Ct. App. 1986).

OPINIONS OF ATTORNEY GENERAL

Payment of dues to municipal leagues or associations by cities and counties is an expenditure for a public purpose permitted by the Idaho Constitution and statutes. The use of those dues for lobbying efforts is permissible if the lobbying is for an appropriate public purpose. OAG 89-7.

Elected officials may discuss potential public policy issues and determine association

policy at meetings of the Association of Idaho Cities and Idaho Association of Counties. But local public policy must be determined and adopted only after compliance with Idaho law, including the Idaho Open Meeting Law, Idaho Code §§ 67-2340 through 67-2347, and all other applicable laws in titles 31 or 50, Idaho Code. OAG 89-7.

RESEARCH REFERENCES

**A.L.R.** — Acquisition of title to land by adverse possession by state or other governmental unit or agency. 18 A.L.R.3d 678.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

**31-605. Counties not to loan credit.** — No county must in any manner loan or give its credit to or in aid of any person, association or corporation unless it is expressly authorized by law so to do. [R.S., § 1734; reen. R.C. & C.L., § 1902; C.S., § 3400; I.C.A., § 30-505.]

STATUTORY NOTES

**Cross References.** — Counties not to loan credit, Const., art. 12, § 4.

JUDICIAL DECISIONS

**Loan of Credit.**

The placing of county property in the hands of a trustee to be liquidated for the benefit of the county and other creditors was a loan of

credit in violation of this section and Const., art. 12, § 4. Johnson v. Young, 53 Idaho 271, 23 P.2d 723 (1932).

**31-606. Payment of judgments against county. [Repealed.]**

STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1871, p. 76, § 4; R.S., § 1735; reen. R.C. & C.L., § 1903; C.S., § 3401; I.C.A.,

§ 30-506, was repealed by S.L. 1989, ch. 74, § 2.

CHAPTER 7

BOARD OF COUNTY COMMISSIONERS

SECTION.	SECTION.
31-701. Constitution of board.	31-706. Quorum — Temporary chairman —
31-702. District from which elected.	Administering oaths.
31-703. Term of office.	31-707. Clerk of board.
31-704. Commissioners' districts.	31-708. Duties of clerk.
31-705. Election of chairman.	31-709. Records to be kept.

## SECTION.

- 31-710. Meetings.  
 31-711 — 31-713. [Amended and Redesignated.]  
 31-714. Ordinances — Penalties.  
 31-715. Style of ordinances — When effective — Publication.  
 31-715A. Summarization of ordinances permitted — Requirements.

## SECTION.

- 31-716. Proof of ordinances.  
 31-717. County initiative and referendum — Signatures required — Printing of petition — Review of measures — Time limits.  
 31-718. Advisory ballot questions.

**31-701. Constitution of board.** — Each county must have a board of county commissioners consisting of three (3) members. [1869, p. 100, § 1; R.S., § 1745; reen. R.C. & C.L., § 1904; C.S., § 3402; I.C.A., § 30-601.]

## STATUTORY NOTES

**Cross References.** — Constitution and term of office, Const., art. 18, § 10.  
 Official bond, amount, § 31-2015.  
 Vacancies, how filled, §§ 59-905, 59-906.

Weather modification districts, establishment, §§ 22-4301, 22-4302.  
 When to take oath, § 59-404.

## JUDICIAL DECISIONS

## ANALYSIS

Action of board not subject to collateral attack.  
 Allowance of claim final.  
 Appeal.  
 — Burden of proof.  
 — Grounds of appeal.  
 — Procedure.  
 Claims improperly included in judgment.  
 Jurisdiction of board.

**Action of Board Not Subject to Collateral Attack.**

Where the board of county commissioners has in good faith acted upon a matter within its jurisdiction, though improvidently, and no appeal is taken, the order becomes final and is not subject to collateral attack. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**Allowance of Claim Final.**

Where no appeal was taken from allowance by board of commissioners of claims against county, such allowance became final and had the effect of a final judgment after the time for appeal expired. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**Appeal.**

**— Burden of Proof.**

On an appeal from an order of the board of county commissioners allowing watermaster's claim for compensation, the watermaster had the burden of showing that sufficient water was not available for all users and that therefore his services were necessary, and the burden did not shift to water users to show the contrary. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**— Grounds of Appeal.**

The reasons or grounds for appeal from an order of the board of county commissioners need not be stated in the notice of appeal. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**— Procedure.**

On an appeal from an order of the board of county commissioners, the case must be tried anew in the district court, and in such trial the board or person in whose favor a claim has been allowed has the affirmative and must produce evidence to make a prima facie case. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**Claims Improperly Included in Judgment.**

Watermaster's compensation for April and May, claims for which had previously been allowed by board of county commissioners, should not have been included in the district court's judgment affirming the order of the board allowing claims for compensation, though no warrants had been issued in payment of the earlier claims. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**Jurisdiction of Board.**

The board of county commissioners is a constitutional board vested by statute with jurisdiction to settle and allow claims. *Udy v.*

*Cassia County*, 65 Idaho 585, 149 P.2d 999 (1914).

**Cited in:** *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915).

**RESEARCH REFERENCES**

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political

Subdivisions, § 124 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 63-96.

**31-702. District from which elected.** — Each member of a board of commissioners must meet the residency requirements in the county and district which he represents as set out in section 34-617, Idaho Code. [1885, p. 85, § 3; R.S., § 1746; reen. R.C. & C.L., § 1905; C.S., § 3403; I.C.A., § 30-602; am. 1982, ch. 332, § 1, p. 839.]

**31-703. Term of office.** — The term of office of a commissioner shall be as follows:

At the general election in 1936, two members shall be elected for a term of two (2) years and one member for a term of four (4) years; at each biennial election thereafter, one member shall be elected for a term of two (2) years and one for a term of four (4) years, it being further provided that at the general election in 1936, the commissioner from county commissioner's district number one, shall be elected for a term of four (4) years and that the four (4) year term shall be allotted thereafter in rotation to districts number two, three, and one. [1869, p. 100, § 2; R.S., § 1747; reen. R.C. & C.L., § 1906; C.S., § 3404; I.C.A., § 30-603; am. 1935, ch. 18, § 1, p. 37.]

**JUDICIAL DECISIONS**

**Cited in:** *Castle v. Bannock County*, 8 Idaho 124, 67 P. 35 (1901); *Prichard v. McBride*, 28 Idaho 346, 154 P. 624 (1916).

**31-704. Commissioners' districts.** — At the regular meeting in January, preceding any general election, the board of commissioners must district their county into three (3) districts, as nearly equal in population as may be, to be known as county commissioners' districts, numbers one (1), two (2) and three (3) respectively; provided, that when a new county shall have been created, or the boundary lines of a county shall have been changed, then the board of commissioners of such county may district their county at any general or special meeting of such board. [R.S., § 1748; am. 1893, p. 3, § 1; reen. 1899, p. 164, § 1; am. R.C. & C.L., § 1907; C.S., § 3405; I.C.A., § 30-604; am. 1943, ch. 69, § 1, p. 147; am. 1972, ch. 132, § 1, p. 261.]

**STATUTORY NOTES**

**Effective Dates.** — Section 2 of S. L. 1972, ch. 132 provided the act should take effect on and after July 1, 1972.



## JUDICIAL DECISIONS

## ANALYSIS

Finality of reapportionment.

Unrepealed by general election law.

**Finality of Reapportionment.**

Where no appeal was taken from the county commissioners' reapportionment of the district, that action, therefore, was final and the state could not collaterally attack it. *People ex rel. Neilson v. Wilkins*, 101 Idaho 394, 614 P.2d 417 (1980).

**Unrepealed by General Election Law.**

This section remained in force notwithstanding the general election law of 1891. *Cunningham v. George*, 3 Idaho 456, 31 P. 809 (1892).

**31-705. Election of chairman.** — The members of the board of commissioners must, at their first regular meeting on the second Monday of January next after their election, elect a chairman from their number. [1869, p. 100, § 6; R.S., § 1750; reen. R.C. & C.L., § 1908; C.S., § 3406; I.C.A., § 30-605.]

## JUDICIAL DECISIONS

**Removal of Chairman.**

Since the statutes do not purport to fix the term for the chairman of the board nor provide any grounds upon which such officer may be removed, the power to appoint such officer

is incident to the power to remove and thus such officer can be removed by the board without notice or hearing. *Gowey v. Siggeikow*, 85 Idaho 574, 382 P.2d 764 (1963).

**31-706. Quorum — Temporary chairman — Administering oaths.** — A majority of the board constitutes a quorum. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board or its clerk may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties. [1869, p. 100, § 6; R.S., § 1751; reen. R.C. & C.L., § 1909; C.S., § 3607; I.C.A., § 30-606.]

## JUDICIAL DECISIONS

**Quorum.**

Decision to stipulate to a judgment concerning a road in a quiet title action was allegedly made by consensus but not at a public meeting, and the settlement was, in this case, a decision that required a vote for county action under § 67-2341(1), given that, under § 31-708, a county clerk was to record the vote of each member or any question upon which there was a division, and because § 31-706

defined a quorum and § 40-1310(6) provided that any action carried out in litigation was to require a quorum; the executive session exception under § 67-2345 did not apply because (1) no vote was made in a regular meeting to authorize such a session and (2) no final action or decision could have been made in such a non-public meeting. *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002).

**31-707. Clerk of board.** — The county auditor is ex officio clerk of the board of commissioners. The records must be signed by the chairman and the clerk. [1869, p. 100, § 6; R.S., § 1752; reen. R.C. & C.L., § 1910; C.S., § 3408; I.C.A., § 30-607.]

JUDICIAL DECISIONS

Service of Appeal to Clerk.

The record was devoid of any facts showing prejudice to the County Board of Commissioners by the notice of appeal not having been served on the clerk of the County Board. Under these circumstances, hospital substantially complied with the statutory require-

ments for service of the notice of appeal and the trial court erred in dismissing the appeal. *Eastern Idaho Health Servs., Inc. v. Burtenshaw*, 122 Idaho 904, 841 P.2d 434 (1992).

**Cited in:** *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002).

**31-708. Duties of clerk.** — The clerk of the board must:

1. Record all the proceedings of the board.
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against, the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Sign all orders made and warrants issued by order of the board for the payment of money.
5. Record the reports of the county treasurer of the receipts and disbursements of the county.
6. Preserve and file all accounts acted upon by the board.
7. Preserve and file all petitions and applications for franchises; and record the action of the board thereon.
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the board. [1869, p. 100, § 6; R.S., § 1753; reen. R.C. & C.L., § 1911; C.S., § 3409; I.C.A., § 30-608.]

STATUTORY NOTES

**Cross References.** — Application for non-medical and medical indigent assistance, § 31-3404.

Official records prima facie evidence, § 9-315.

JUDICIAL DECISIONS

ANALYSIS

Appeal from board's act.

—Notice.

Record.

—Exactness.

—Necessity.

—Unrecorded proceedings.

—Evidence of board's actions.

**Appeal from Board's Act.**

—Notice.

Where property owners sought appeal from board's final approval of real estate development, the property owners' mailing of notice of appeal to the planning and zoning commission, to the board of adjustment and to the county commissioners was substantial compliance with notice requirement in former

§ 31-1510 for appeal to the district court, in the absence of a showing that the board was prejudiced by the notice of appeal not having been served on the clerk. In *re Bennion*, 97 Idaho 764, 554 P.2d 942 (1976).

**Record.**

Decision to stipulate to a judgment concerning a road in a quiet title action was allegedly made by consensus but not at a public meet-

ing, and the settlement was, in this case, a decision that required a vote for county action under § 67-2341(1), given that, under § 31-708, a county clerk was to record the vote of each member or any question upon which there was a division, and because § 31-706 defined a quorum and § 40-1310(6) provided that any action carried out in litigation was to require a quorum; the executive session exception under § 67-2345 did not apply because (1) no vote was made in a regular meeting to authorize such a session and (2) no final action or decision could have been made in such a non-public meeting. *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002).

#### —Exactness.

Under § 31-709 and this section it is not required that board of county commissioners shall recite in their proceedings their decisions and judgments with the same precision and exactness required by courts of record. A substantial compliance with the statutes is sufficient. *Gilbert v. Canyon County*, 14 Idaho 437, 94 P. 1027 (1908); *Murphy v. Canyon County*, 14 Idaho 449, 94 P. 1033 (1908).

#### —Necessity.

Board is required by law to keep a record of its proceedings. No presumption arises as to the regularity of any of its proceedings not appearing of record, even though persons may

have acted upon the supposed order of the board. *Gorman v. Board of County Comm'rs*, 1 Idaho 553, appeal dismissed, 86 U.S. (19 Wall.) 661, 22 L. Ed. 226 (1873).

Statute requires that board of county commissioners must record its minutes and decisions. *Shillingford v. Benewah County*, 48 Idaho 447, 282 P. 864 (1929).

#### —Unrecorded Proceedings.

While the statute directs that certain matters be recorded, yet proceedings are not invalid by reason of the failure to so record such matters. *Sims v. Milwaukee Land Co.*, 20 Idaho 513, 119 P. 37 (1911).

#### —Evidence of Board's Actions.

Where board has failed to make a record of its proceedings, it is proper to show by oral testimony what the board in fact did do. *Sims v. Milwaukee Land Co.*, 20 Idaho 513, 119 P. 37 (1911).

In action against county for gasoline furnished for sheriff's automobile, it was held proper to exclude evidence that unrecorded entry had been made by board of county commissioners to require county officers to expend monthly only a proportionate part of the various budget appropriations. *Shillingford v. Benewah County*, 48 Idaho 447, 282 P. 864 (1929).

**Cited in:** *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**31-709. Records to be kept.** — The board must cause to be kept permanently and indefinitely, in accordance with the provisions of sections 9-331 and 9-332, Idaho Code:

1. Minute records, in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.

2. Allowance records, in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering and indexing the same through each year.

3. Road records, containing all proceedings and adjudications relating to the establishment, maintenance, change and discontinuance of roads, road districts, and overseers thereof, their reports and accounts.

4. Franchise records, containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required.

5. Warrant records, to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

6. Ordinance records, containing all ordinances, stating the date enacted.

7. Resolutions records, containing all resolutions, stating the date adopted. [R.S., § 1754; am. R.C. & C.L., § 1912; C.S., § 3410; I.C.A.,



§ 30-609; am. 1989, ch. 93, § 1, p. 219; am. 1993, ch. 140, § 3, p. 371; am. 1995, ch. 61, § 1, p. 134.]

STATUTORY NOTES

**Cross References.** — Tax levies, §§ 63-903 and 63-907.

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13

through 22 of this act shall be in full force and effect on and after March 9, 1995, retroactive to January 1, 1995, and that § 12 should be in full force and effect on July 1, 1995. Approved March 9, 1995.

JUDICIAL DECISIONS

**Books as Evidence.**

Either the minute book or the road book required to be kept by board of county commissioners under provisions of this section and § 40-105 is competent evidence to show appointment of road overseer, and his testi-

mony may be received upon that question. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

**Cited in:** *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002).

**31-710. Meetings.** — (1) The regular meetings of the boards of commissioners must be held at their respective county seats on the second Monday of each month of the year, or if the board determines that county affairs require regular meetings more often, then at such times as may be provided for in advance by ordinance, and must continue from time to time until all the business before them has been addressed. Such other meetings must be held, to canvass election returns, equalize taxation, and for other purposes as are prescribed by law or provided for by the board.

(2) Adjourned meetings may be provided for, fixed and held for the transaction of business, by an order duly entered of record, in which must be specified the character of business to be transacted at such meetings, and none other than that specified must be transacted.

(3) If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five (5) days' notice thereof must, by the clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

(4) All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. The clerk of the board must give five (5) days' public notice of all special or adjourned meetings, stating the business to be transacted, by posting three (3) notices in conspicuous places, one (1) of which shall be at the courthouse door. [1869, p. 100, §§ 4, 5, 8; 1883, p. 10, § 1; R.S., §§ 1755 — 1758; reen. R.C. & C.L., §§ 1913 — 1916; C.S., §§ 3411 — 3414; I.C.A., §§ 30-610 — 30-613; am. 1935, ch. 110, § 1, p. 259; am. 1937, ch. 23, § 1, p. 33; am. 1939, ch. 119, § 1, p. 215; am. 1989, ch. 65, § 1, p. 105; am. and redesign. 1989, ch. 93, § 2, p. 219.]

## STATUTORY NOTES

**Cross References.** — Meetings open to public, §§ 67-2340 — 67-2347.

**Amendments.** — This section was amended by two 1989 acts, ch. 65, § 1 and ch. 93, § 2, both effective July 1, 1989 — which appear to be compatible and have been compiled together.

The 1989 amendment, by ch. 65, inserted "or if the board determines that county affairs require regular meetings more often, then at

such times as may be provided for in advance by ordinance" and substituted "has been addressed" for "is disposed of" in the former first paragraph (now subsection (1)) in the first sentence.

The 1989 amendment, by ch. 93, designated the former first paragraph as subsection (1) and added subsections (2) — (4) which were formerly §§ 31-711 — 31-713 respectively.

## JUDICIAL DECISIONS

### ANALYSIS

Adjournment.

— Recess adjournment.

Appeal from board order.

Canvass of election.

Notes taken during meeting.

Open meeting.

Special meetings.

— Evidence of calling.

— Sufficiency of notice.

### Adjournment.

Regular session may be adjourned from day to day or to a future date without a compliance with this section, there being a distinction between meeting after recess and meeting after close of regular session. *Gilbert v. Canyon County*, 14 Idaho 437, 94 P. 1027 (1908); *Murphy v. Canyon County*, 14 Idaho 449, 94 P. 1033 (1908).

### — Recess Adjournment.

Where it clearly appears by order of adjournment that the regular business of board has not been completed, and that same will be considered at a future date, fixed by order of adjournment, and there is no adjournment sine die, and session has not terminated by the opening of another session, such adjournment will be construed as a recess adjournment and a continuation of the regular session. *Gilbert v. Canyon County*, 14 Idaho 437, 94 P. 1027 (1908); *Murphy v. Canyon County*, 14 Idaho 449, 94 P. 1033 (1908).

### Appeal from Board Order.

Minutes of clerk of board of county commissioners, setting out an order of the board, and stating that board convened pursuant to the call of the chairman, were competent evidence in an appeal to the district court from the order. *Etter v. Board of County Comm'rs*, 44 Idaho 192, 255 P. 1095 (1927).

### Canvass of Election.

Mere irregularity on part of election officers or their omission to observe some merely directory provisions of law will not vitiate poll. *Sizemore v. Board of County Comm'rs*, 36

Idaho 184, 210 P. 137 (1922).

Where statute provides that certain acts shall be done within particular time or in particular manner and does not declare them essential to validity of election, they will be regarded as mandatory or directory according to whether they do or do not affect actual merits of election. *Sizemore v. Board of County Comm'rs*, 36 Idaho 184, 210 P. 137 (1922).

Where petition is filed with board and other required preliminaries are complied with, board acquires jurisdiction to act on petition and such jurisdiction is not disturbed by error in acting upon petition at earlier date than contemplated by statute. *Sizemore v. Board of County Comm'rs*, 36 Idaho 184, 210 P. 137 (1922).

### Notes Taken During Meeting.

Trial court erred in holding that as a matter of law "raw notes" ("handwritten notes," "raw minutes") taken by Clerk of the Board of County Commissioners during meetings of the County Board of Commissioners, could not be public writings. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).

### Open Meeting.

There is a clear and definite conflict between the provisions of § 67-2345 of the open meeting law and subsection (4) of this section, which requires that all meetings of the board of county commissioners be public; therefore, § 67-2345, which was enacted later in time, governs. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

**Special Meetings.****—Evidence of Calling.**

Where original order signed by members of the board of county commissioners calling a special session of the board has been lost, record copy thereof may be introduced in evidence. *Black Canyon Irrigation Dist. v. Marple*, 19 Idaho 176, 112 P. 766 (1911).

**—Sufficiency of Notice.**

Notice calling a special meeting of commissioners for the purpose of raising funds to purchase a site for, and to erect, a courthouse, is sufficient to authorize board, at meeting held pursuant to such notice, to submit to electors of county question whether bonds should be issued for purpose of purchasing a site for and erecting a courthouse and jail, where courthouse and jail constitute one building. *Shoshone County v. E.H. Rollins &*

*Sons*, 11 Idaho 314, 82 P. 105 (1905).

Only difference between adjourned and special meeting is that an adjourned meeting is a meeting to be provided for while board is in session by proper order, said meeting to be held after the close of the regular session; a special meeting is a meeting called upon order of a majority of board after close of the regular session, to be held at such time as the order may fix. For either of said meetings, clerk must give the notice required by this section. The notice is not required for a meeting after a recess. *Gilbert v. Canyon County*, 14 Idaho 429, 94 P. 1027 (1908); *Murphy v. Canyon County*, 14 Idaho 449, 94 P. 1033 (1908).

**Cited in:** *Etter v. Board of County Comm'rs*, 44 Idaho 192, 255 P. 1095 (1927); *Blaine County v. Butte County*, 45 Idaho 193, 261 P. 338 (1927); *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002).

**RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of statutes making public proceedings open to the public. 38 A.L.R.3d 1070; 34 A.L.R.5th 591.

Attorney-client exception under state law making proceedings by public bodies open to the public. 34 A.L.R.5th 591.

**31-711 — 31-713. [Amended and Redesignated.]****STATUTORY NOTES**

**Compiler's Notes.** — These sections which comprised 1869, p. 100, §§ 4, 5, 8; 1883, p. 10, § 1; R.S., §§ 1756 — 1758; reen. R.C. & C.L., §§ 1914 — 1916; C.S., §§ 3412 — 3414; I.C.A., §§ 30-611 — 30-613; am.

1935, ch. 110, § 1, p. 259; am. 1937, ch. 23, § 1, p. 33; am. 1939, ch. 119, § 1, p. 215, were amended and redesignated as § 31-710(2) — (4) by S.L 1989, ch. 93, § 2, p. 219.

**31-714. Ordinances — Penalties.** — The board of county commissioners may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein, and may enforce obedience to such ordinances with such fines or penalties, including infraction penalties, as the board may deem proper; provided, that the punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. [1965, ch. 159, § 1, p. 308; am. 1976, ch. 145, § 1, p. 530; am. 1978, ch. 260, § 1, p. 566; am. 2000, ch. 35, § 1, p. 63; am. 2005, ch. 359, § 14, p. 1133.]



## STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 2000, ch. 35 provided that the act shall be in full force and effect on and after July 1, 2000.

## JUDICIAL DECISIONS

## ANALYSIS

Herd district creation.

In general.

Livestock control.

Merit system.

**Herd District Creation.**

Creation of a herd district by ordinance is within the power of the county commissioners. *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

**In general.**

As the legislative arm of county government, the Board of County Commissioners has both express and implied power to promulgate ordinances, rules and regulations, which, in the judgment of the board, promote the general welfare of the county. *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988).

**Livestock Control.**

In the absence of a state legislative enactment clearly indicating that livestock must be free to roam the lands of Idaho uninhibited by the ownership or character of the lands, counties and municipalities may validly exercise their police powers to prohibit such free roaming livestock. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

Fact that compliance with ordinance prohibiting livestock from roaming would be burdensome in that livestock owners would be required to spend large sums of money in fencing their lands did not render the ordinance unreasonable and arbitrary. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

County ordinance prohibiting livestock from running loose was without force and effect within the limits of the incorporated municipalities located in the county; however, this did not invalidate the ordinance nor make it ineffective in the balance of the county. *Benewah County Cattlemen's Ass'n v.*

*Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

County ordinance prohibiting livestock from running at large was not invalid as extending application of the ordinance beyond the geographical limits of the county since the ordinance did not purport to, nor could it, affect or regulate matters occurring outside such county; should livestock from outside the county wander into lands within the county, they would then come under the jurisdiction of the county and be subject to its valid ordinances and the fact that their owners might reside outside the county would not alter the result. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

Even if it be assumed for the purpose of discussion that the herd district statutes in some degree addressed the same problems as those addressed by a county ordinance prohibiting livestock from roaming, local enactments which merely extend the state law by way of additional restrictions or limitations are not invalid. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

**Merit System.**

The board of county commissioners had the statutory authority to create a reasonable county merit system, and such an act was a valid legislative exercise of its express power to promote the general welfare of the county. *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988).

**Cited in:** *County of Ada v. Hill*, 110 Idaho 289, 715 P.2d 959 (1986); *Union Pac. R.R. v. Idaho*, 654 F. Supp. 1236 (D. Idaho 1987).

**31-715. Style of ordinances — When effective — Publication. —**

The style of all ordinances shall be: "Be it ordained by the board of county commissioners of .... county, Idaho"; and all ordinances of a general nature shall, before they take effect and within one (1) month after they are passed, be published in at least one (1) issue of a newspaper published in the county, but if no paper be published in the county, then in some paper having

general circulation therein; provided, however, that in cases of riot, infectious or contagious diseases, or other impending danger requiring its immediate operation, such ordinances shall take effect upon the proclamation of the board of county commissioners, posted in at least five (5) public places in the county; provided further that whenever a revision or codification of ordinances is made and the revised or codified ordinances are published by authority of the board of county commissioners in book or pamphlet form no further publication thereof shall be deemed necessary, provided that when codes establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, sanitary regulations or health measures, or other related or similar work, have been regularly adopted as a code by such board, they shall take effect without publication or posting thereof if reference be made to such code in a regularly adopted and published ordinance without including in such regularly adopted and published ordinance more than a particular reference to such code, provided, however, that one (1) copy of such code duly certified by the clerk of the board of county commissioners shall have been filed for use and examination by the public in the office of the clerk of the board of county commissioners prior to the adoption of said ordinance by the clerk of the board of county commissioners, and thereafter kept on file in such office. [1965, ch. 159, § 2, p. 308; am. 1987, ch. 15, § 1, p. 19.]

**31-715A. Summarization of ordinances permitted — Requirements.** — (1) The county may publish a summary of the ordinance which summary shall be approved by the board of county commissioners and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
- (e) Any other information necessary to provide an accurate summary; and
- (f) A statement that the full text is available and the name, location, and office hours of the agency where a complete copy may be obtained.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains legal descriptions, or contains provisions regarding taxation or penalties concerning real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering one or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for written legal description of property provided they contain sufficient detail to clearly define the area with which the ordinance is concerned.

(3) Before submission of a summary to a newspaper for publication under this section, the county clerk under seal of the board of county commissioners shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

(4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided to any citizen on personal request. [I.C., § 31-715A, as added by 1981, ch. 136, § 1, p. 239; am. 1989, ch. 74, § 3, p. 128.]

**31-716. Proof of ordinances.** — All ordinances shall be passed pursuant to such rules and regulations not inconsistent with the general laws relating thereto as the board of county commissioners may provide; and all such ordinances may be proved by the certificate of the clerk under the seal of the board of county commissioners, and when printed or published in book or pamphlet form by authority of the board of county commissioners, shall be read and received in evidence in all courts and places without further proof. [1965, ch. 159, § 3, p. 308.]

**31-717. County initiative and referendum — Signatures required — Printing of petition — Review of measures — Time limits.** — The board of county commissioners of each county shall provide by ordinance for direct legislation by the people through the initiative and referendum. For the purposes of this section, “initiative” means the right of the people at an election to adopt, amend or repeal legislation. “Referendum” means the right of the people at an election to approve or reject legislation adopted by the board of county commissioners. Requirements of the initiative and referendum ordinance adopted shall be as follows:

(1) Petitioners for initiative or referendum shall be equal to twenty per cent (20%) of the qualified electors voting in the county in the last general election;

(2) Initial petitions for referendum containing not fewer than twenty (20) signatures of qualified electors of the county shall be filed not less than thirty (30) days following the final publication of the ordinance to be subject to referendum as provided in section 31-715, Idaho Code. After the initial filing of the petition the provisions of subsection (6) of this section shall apply. Completed petitions, with the requisite number of signatures for referendum, shall be filed with the county clerk not more than one hundred eighty (180) days after the date of approval of the form in subsection (6)(d) of this section;

(3) Completed petitions, with the requisite number of signatures for initiative, shall be filed with the county clerk not more than one hundred eighty (180) days after the date of approval of the form in subsection (6)(d) of this section;

(4) All requirements for gathering signatures shall be met by or within the time frames imposed by subsections (2) and (3) of this section;

(5) A special election for initiative or referendum shall be provided as prescribed in section 34-106, Idaho Code;

(6) The following requirements for signature, verification of valid petitions, printing of petition, review of measures, and time limits, except as



expressly modified herein, shall be as nearly as practicable as provided in sections 34-1801 through 34-1811 and 34-1813 through 34-1822, Idaho Code:

(a) Before beginning to circulate any petition for an initiative or for a referendum on any ordinance passed by the board of county commissioners, the person or persons or organization or organizations under whose authority the measure is to be initiated or referred shall send or deliver to the county clerk a copy of such petition duly signed by at least twenty (20) qualified electors of the county which shall be filed by said officer in his office, and who shall immediately transmit a copy of the petition to the prosecuting attorney for the issuance of the certificate of review as provided in section 34-1809, Idaho Code.

(b) After receiving a copy of the petition from the county clerk, the county prosecuting attorney may confer with the petitioner and shall, within ten (10) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the prosecuting attorney shall be advisory only and the petitioner may accept or reject them in whole or in part. The prosecuting attorney shall issue a certificate of review to the county clerk certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. Within fifteen (15) working days after the issuance of a certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the ballot measure with the county clerk for assignment of a ballot title. Other requirements shall be as provided in section 34-1809, Idaho Code.

(c) Preparation of the ballot title by the prosecuting attorney shall be as prescribed in section 34-1809, Idaho Code.

(d) After the form of the initiative or referendum petition has been approved by the county clerk, the petition shall be printed by the person or persons or organization or organizations under whose authority the measure is to be initiated or referred and circulated in the county for the signatures of legal voters.

(e) Verification of petition and signatures shall be as prescribed in section 34-1807, Idaho Code.

(f) Upon final certification of the petition, the county clerk shall order an election to be held pursuant to section 34-106, Idaho Code.

(g) If the county clerk shall refuse to accept and file any petition for the initiative or for the referendum with the requisite number of signatures of qualified electors thereto attached, any citizen may apply, within ten (10) working days after such refusal, to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the county clerk shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the county clerk

and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the supreme court within ten (10) working days after a decision is rendered.

(h) It shall be unlawful for any person to make any false affidavit concerning any petition in this section or to leave a petition unattended for the purpose of gathering signatures. Any person violating any of the provisions of this subsection shall be guilty of a misdemeanor.

(7) Any measure so initiated by or referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise. [I.C., § 31-717, as added by 1977, ch. 145, § 1, p. 321; am. 1993, ch. 313, § 1, p. 1157; am. 1994, ch. 372, § 1, p. 1197; am. 1996, ch. 283, § 9, p. 914.]

### STATUTORY NOTES

**Effective Dates.** — Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 11 of S.L. 1996, ch. 283 declared an emergency. Approved March 15, 1996.

**31-718. Advisory ballot questions.** — The board of county commissioners shall have the authority to place a question on the ballot pertaining to any issue before the citizens of that county during a primary or general election. The results of such an election shall be advisory only. [I.C., § 31-718, as added by 1994, ch. 372, § 2, p. 1197.]

## CHAPTER 8

### POWERS AND DUTIES OF BOARD OF COMMISSIONERS

#### SECTION.

- 31-801. General powers and duties.
- 31-802. Supervision of county officers.
- 31-803. Division of county into districts.
- 31-804. Supervision of elections.
- 31-805. Supervision of roads, bridges, and ferries.
- 31-806. Acquisition of property for park or recreational purposes — Dedication — Eminent domain.
- 31-807. Management of county property.
- 31-807A. Commissioners must be disinterested.
- 31-808. Sale of county property — General procedure — Sale of property acquired through tax deed — Procedure after attempted auction — Exchange of county property — Sale of certain odd-lot property — Sale, exchange or donation of property to other units of government.
- 31-808A, 31-808B. [Repealed.]
- 31-809. Audit of county funds.
- 31-810. Payment of claims.

#### SECTION.

- 31-811. Levy of taxes.
- 31-812. Equalization of assessments.
- 31-813. Control of suits.
- 31-814. Insurance of county property.
- 31-815. Licensing of toll roads, bridges, and ferries.
- 31-815A. Transfer of license applications.
- 31-816. Fixing of salaries.
- 31-817. Filling of vacancies.
- 31-818. Authority to appoint administrative assistants and staff — County commissioner as administrator may be appointed.
- 31-819. Publication of proceedings.
- 31-820. By-laws.
- 31-821. Adoption of seal.
- 31-822. Maintenance of fair grounds — Transfer of property to fair district.
- 31-823. Maintenance of exhibits in aid of fairs — Encouragement of immigration and trade.
- 31-824. Employment of prisoners.
- 31-825. Maintenance of county law library.

## SECTION.

- 31-826. Cooperation with agricultural extension work.
- 31-827. [Repealed.]
- 31-828. General and incidental powers and duties.
- 31-829. Sale or replacement of personal property.
- 31-830. Award to county sheriff or deputy county sheriff of his handgun and badge upon retirement.
- 31-831 — 31-833. [Repealed.]
- 31-834, 31-835. [Repealed.]
- 31-836. Lease of county property.
- 31-837, 31-838. [Repealed.]
- 31-839. Cooperation with agricultural extension work.
- 31-840. Extension agents — Salaries and expenses.
- 31-841, 31-842. [Repealed.]
- 31-843. [Amended and Redesignated.]
- 31-844. Subpoenas for witnesses.
- 31-845. Enforcement of attendance and testimony.
- 31-846. Witness fees need not be prepaid.
- 31-847. Leave of absence to officers.
- 31-848 — 31-854. [Repealed.]
- 31-855. Neglect of duty by commissioners.
- 31-856. Migratory labor housing — Cooperation with federal government.

## SECTION.

- 31-857. School, road, herd and other districts — Presumption of validity of creation or dissolution.
- 31-858 — 31-861. [Repealed.]
- 31-862. Authorizing special tax to be used solely and exclusively for preventive health services.
- 31-863. Levy for charities fund.
- 31-864. Historical societies and museums — Support by county.
- 31-865. [Repealed.]
- 31-866. Contracts for public benefit — Designated grantee.
- 31-867. Special levy for courts — District court fund.
- 31-868. Contracts for fire protection.
- 31-869. Development of energy systems.
- 31-870. Fees for county services.
- 31-871. Classification and retention of records.
- 31-872. Regulation of firearms — Control by state.
- 31-873. Reimbursement for certain medical assistance payments.
- 31-874. Proceedings and records of medical indigents.
- 31-875. Computerized mapping system fees.
- 31-876. Public transportation services.
- 31-877. Water and sewer services.

**31-801. General powers and duties.** — The boards of county commissioners in their respective counties shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law. [R.S., § 1759; R.C., § 1917; am. 1913, ch. 143, § 1, p. 506; compiled and reen. C.L., § 1917; C.S., § 3415; I.C.A., § 30-701; am. 1989, ch. 73, § 1, p. 117.]

## STATUTORY NOTES

**Cross References.** — Community mineral leases authority to enter, §§ 47-1401 — 47-1403.

Contracts for public benefit, authority to enter, § 31-866.

Conveyance or transfer of real or personal property to another governmental unit, §§ 67-2322 — 67-2325.

County charges presented to commissioners, §§ 31-3301, 31-3302.

County irrigation projects, § 42-2801 et seq.

Duty to make provision for care of poor, §§ 31-3401 — 31-3418, 31-3520 and — 31-3521.

Election laws, distribution, directives and instructions relating to, § 34-202.

Federal agencies, cooperation with in mat-

ters relating to drainage, reclamation and drought relief, §§ 31-901 — 31-906.

Fire protection districts, tax levy, § 31-1421.

Joint operation of service functions with municipalities or other counties, §§ 50-904 — 50-908.

Junior college districts, cooperation with, § 33-2115.

Seeding of burned areas, § 38-506 et seq.

Service men's memorials, § 65-101 et seq.

Trails for livestock, county commissioners to lay out, § 40-702.

Weather modification districts, duties, §§ 22-4301, 22-4302.

Workmen's compensation law applies to county officers and employees, § 72-205.

Zoning, §§ 67-6501 — 67-6529.



## JUDICIAL DECISIONS

## ANALYSIS

Character of board.  
Powers in general.

**Character of Board.**

Board of county commissioners is a tribunal created by statute, with limited jurisdiction, and only quasi-judicial powers, and cannot act except in strict accordance with the statute. *Gorman v. Board of County Comm'rs*, 1 Idaho 553, appeal dismissed, 86 U.S. (19 Wall.) 661, 22 L. Ed. 226 (1873).

Boards of county commissioners are entireties and can act only collectively and as empowered by law. *Rankin v. Jauman*, 4 Idaho 394, 39 P. 1111 (1895); *Miller v. Smith*, 7 Idaho 204, 61 P. 824 (1900).

**Powers in General.**

Board of county commissioners is vested with a discretionary power, and exercises the higher and superior power in the matter of granting licenses within an incorporated city. *Anderson v. Board of County Comm'rs*, 22 Idaho 190, 125 P. 188 (1912).

Board of county commissioners has only such powers as are expressly or impliedly conferred upon it by statute. *Prothero v.*

*Board of Comm'rs*, 22 Idaho 598, 127 P. 175 (1912).

Where statutes of the state impose certain duties upon board of county commissioners, and require certain reports and performance of certain duties, county commissioners have no right or authority to exercise the arbitrary judgment that such reports are unnecessary and impracticable. It is the duty of a public officer to obey the law, and he cannot justify his acts upon the ground that he does not believe that it will be necessary to obey. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912); *Crowley v. Empey*, 23 Idaho 190, 129 P. 340 (1912).

County commissioners held authorized to employ counsel to bring suits on contingent fee basis for recovery against bondsmen of deposits in closed banks. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

**Cited in:** *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 107 et seq., 167 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 63 et seq., 185 et seq.

**A.L.R.** — *Mandamus to compel zoning officials to cancel permit granted in violation of zoning regulation*, 68 A.L.R.3d 166.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 A.L.R.3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties, 71 A.L.R.3d 90.

**31-802. Supervision of county officers.** — To supervise the official conduct of all county officers, and appointed boards or commissions of the county charged with assessing, collecting, safekeeping, management or disbursement of the public moneys and revenues; see that they faithfully perform their duties; direct prosecution for delinquencies; approve the official bonds of county officers, and when necessary, require them to make reports, and to present their books and accounts for inspection. [R.S., § 1759; R.C., § 1917a, as added by 1913, ch. 143, § 2, p. 506; reen. C.L., § 1917a; C.S., § 3416; I.C.A., § 30-702; am. 1989, ch. 73, § 2, p. 117.]

## STATUTORY NOTES

**Cross References.** — Bonds, review, procedure when insufficient, § 59-806.

County hospital board, quarterly reports to

county commissioners, § 31-3607.

Instructions, refusal of officer to obey, compliance, § 67-1081.

Joint county and city hospital boards, quarterly reports to county commissioners, § 31-3710.

Suspension and removal of county treasurer for default reported by state controller, § 67-1055.

## JUDICIAL DECISIONS

### ANALYSIS

County warrants.

Limitations on power of board.

Official bonds.

### County Warrants.

Warrants issued by county auditor which are void, because of the omission of a specification of the liability for which they were drawn, cannot be ratified by board of commissioners so as to render them valid. *Bingham County v. First Nat'l Bank*, 122 F. 16 (9th Cir. 1903).

### Limitations on Power of Board.

Board of county commissioners has no power or authority to pass upon the misfeasance or malfeasance of officer. *Gorman v. Board of County Comm'rs*, 1 Idaho 553, appeal dismissed, 86 U.S. (19 Wall.) 661, 22 L. Ed. 226 (1873).

Boards of county commissioners have no authority to devolve on appointee of their own, duties and functions which the law has already fixed to another office. *Meller v. Board of Comm'rs*, 4 Idaho 44, 35 P. 712 (1894).

Board of county commissioners cannot enter into an agreement for the recording of an

instrument at a less rate than that prescribed by law. *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913).

Board cannot require recorder to keep an index not required by law. *Reilly v. Board of County Comm'rs*, 29 Idaho 212, 158 P. 322 (1916).

### Official Bonds.

It is the duty of board to approve the bond of officer if, upon its face, it is prima facie good. Board may at any time afterward cite sureties to make a further justification. *Gorman v. Board of County Comm'rs*, 1 Idaho 553, appeal dismissed, 86 U.S. (19 Wall.) 661, 22 L. Ed. 226 (1873).

**Cited in:** *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Wonnacott v. Kootenai County*, 32 Idaho 342, 182 P. 353 (1919); *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

## RESEARCH REFERENCES

**A.L.R.** — Validity, construction, and application of regulation regarding outside em-

ployment of governmental employees or officers, 94 A.L.R.3d 1230.

**31-803. Division of county into districts.** — To divide the counties into election precincts, road and other districts required by law, change the same and create others, as convenience requires. [R.S., § 1759; R.C., § 1917b, as added by 1913, ch. 143, § 2, p. 506; reen. C.L., § 1917b; C.S., § 3417; am. 1931, ch. 51, § 1, p. 85; I.C.A., § 30-703; am. 1970, ch. 120, § 1, p. 284; am. 1989, ch. 73, § 3, p. 117.]

## STATUTORY NOTES

**Cross References.** — Creation of election precincts, § 34-301.

Herd districts, § 25-2401 et seq.

Highway districts, dissolution, § 40-1801 et seq.

Highway districts in two or more counties,

consolidation of, § 40-1501 et seq.

Highway district taxes, assessment and collection, §§ 40-803 — 40-806, 40-817, 40-826.

Organization of irrigation districts, § 43-101 et seq.

School districts, § 33-301 et seq.

## JUDICIAL DECISIONS

**Herd District Creation.**

Creation of a herd district by ordinance is within the power of the county commission-

ers, *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

## DECISIONS UNDER PRIOR LAW

**Establishment of Justices' Precincts.**

This section, taken in connection with other statutes, contemplates establishment of two kinds of precincts by board of commissioners, viz.: election precincts and justices' precincts, which need not be coterminous, but, where commissioners establish election precincts, and provide for the election of justices of the peace in such precincts, it will be deemed

sufficient compliance with the law, although they do not eo nomine describe such precincts as justices' precincts. *State ex rel. Griffith v. Vineyard*, 9 Idaho 134, 72 P. 824 (1903).

Under this and the following section, board of county commissioners has power to establish justices' precincts in incorporated cities. *Johnston v. Savidge*, 11 Idaho 204, 81 P. 616 (1905).

**31-804. Supervision of elections.** — (1) The board of county commissioners must establish, abolish and change election precincts and canvass all election returns.

(2) The board must provide all poll lists, poll books, blank returns and certificates, proclamations of election and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers. [1885, p. 106, § 12; R.S., §§ 1759, 1763; R.C., § 1917c, as added by 1913, ch. 143, § 2, p. 507; am. R.C., § 1918; reen. C.L., §§ 1917c, 1918n; C.S., §§ 3418, 3450; I.C.A., §§ 30-704, 30-741; am. 1982, ch. 77, § 1, p. 145; am. and redesisg. 1989, ch. 73, § 4, p. 117.]

## STATUTORY NOTES

**Cross References.** — Commissioners to furnish election supplies, §§ 34-901, 34-902.

County board of canvassers, commissioners to serve as, § 34-1205.

For duties under election laws, see generally, title 34.

**Compiler's Notes.** — Subsection (2) of this section was formerly compiled as § 31-843.

## JUDICIAL DECISIONS

## ANALYSIS

Construction.

Review of board's action.

**Construction.**

This section requires the board of county commissioners to establish election precincts in their county, and, while a justice's precinct may include one or more election precincts, an election precinct cannot include more than one justice's precinct. *State ex rel. Griffith v. Vineyard*, 9 Idaho 134, 72 P. 824 (1903).

diction to create justices' precincts within limits of incorporated city, and does so, its action can be reviewed only by appeal. *Johnston v. Savidge*, 11 Idaho 204, 81 P. 616 (1905).

**Cited in:** *Corker v. Pence*, 12 Idaho 152, 85 P. 388 (1906).

**Review of Board's Action.**

If board of county commissioners has juris-



**31-805. Supervision of roads, bridges, and ferries.** — The board shall lay out, maintain, control and manage public roads, turnpikes, ferries and bridges within the county, and levy such tax therefor as authorized by law; provided that the board need not lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges inside the boundaries of a highway district formed pursuant to title 40, Idaho Code. [R.S., § 1759; R.C., § 1917d, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917d; C.S., § 3419; I.C.A., § 30-705; am. 1989, ch. 74, § 4, p. 128.]

STATUTORY NOTES

**Cross References.** — Highway districts, consolidation of adjoining districts, § 40-1501 et seq.

Hospitals for county poor, § 31-3501 et seq.

Joint county bridges, § 40-807.

Maximum loads on bridges, county commissioners may limit, sign specifying, § 40-1206.

JUDICIAL DECISIONS

ANALYSIS

Contracts.

County commissioner killed in course of his employment.

Escape ramps.

Liability.

**Contracts.**

County commissioners are given power to maintain public roads and highways, and that power includes authority to enter into such contracts as are not prohibited for purpose of keeping same in repair. *Twin Falls Bank & Trust Co. v. Twin Falls County*, 25 Idaho 171, 136 P. 804 (1913).

**County Commissioner Killed in Course of His Employment.**

A county commissioner who was killed when his automobile was struck by a train on his way from his home to county seat to attend a meeting of a board was at the time pursuing the "course of his employment," and therefore his death was compensable in view of the statute which defined actual and necessary expenses which a county is required to pay to a commissioner, as traveling and hotel expenses incurred by the commissioner when absent from his residence in the performance of his official duties, thereby indicating a legislative recognition of the fact that the commissioner would have to travel in the discharge of his official duties. *Stover v. Washington County*, 63 Idaho 145, 118 P.2d 63 (1941).

**Escape Ramps.**

Based upon the definition of "highways" in § 40-109(5), runaway escape ramps are, as a matter of law, part of the highway district road system, being "roadside improvements, adjacent lands or interests lawfully acquired, pedestrian facilities, and any other structures, works or fixtures incidental to the preservation or improvement of the highways" and under § 40-1310 and this section, the highway district had a duty to maintain those runaway escape ramps as part of the highway district road system. *Freeman v. Juker*, 119 Idaho 555, 808 P.2d 1300 (1991).

**Liability.**

County commissioners and road overseers are not individually liable in damages for injuries sustained through defective highways. *Youmans v. Thornton*, 31 Idaho 10, 168 P. 1141 (1917).

**Cited in:** *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908); *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912); *Stover v. Washington County*, 63 Idaho 145, 118 P.2d 63 (1941); *Bingham v. Franklin County*, 118 Idaho 318, 796 P.2d 527 (1990); *Bingham v. Franklin County*, 118 Idaho 318, 796 P.2d 527 (1990).

OPINIONS OF ATTORNEY GENERAL

Counties in Idaho probably have authority under current state law to franchise cable television companies. With general franchis-

ing authority under state law, federal law allows counties to regulate the basic cable television service rate and charge a franchise

fee, both subject to the conditions of federal law. OAG 94-5.

**31-806. Acquisition of property for park or recreational purposes — Dedication — Eminent domain.** — The board of county commissioners of each county in this state may purchase, lease, obtain by gift or accept by grant from private persons, corporations, the United States, the state of Idaho or other governmental agencies, real or personal property, within or without its territorial limits, and may hold, maintain, improve and operate the same for the use and purpose of a public park or public recreation, and it may dedicate property already owned by the county to a like purpose. This section shall not affect the right of a county to acquire property by proceedings in eminent domain. [I.C., § 31-806, as added by 1996, ch. 98, § 16, p. 308.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-806, which comprised R.S., § 1759; R.C., § 1917f, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917f; C.S., § 3421; I.C.A., § 30-706, was repealed by S.L. 1989, ch. 73, § 5.

**Effective Dates.** — Section 21 of S.L. 1996, ch. 98 provided that the act should be in full force and effect on and after January 1, 1997.

**31-807. Management of county property.** — A board of county commissioners shall have the power and authority to purchase, receive by donation, or lease any real or personal property necessary for the use of the county; preserve, take care of, manage and control the county property, but no purchase of real property must be made unless the value of the same has been previously estimated by a real estate appraiser licensed to appraise real property in the state of Idaho pursuant to the provisions of chapter 41, title 54, Idaho Code, and no more than the appraised value must be paid therefor. However, if the county assessor determines that the value of the real property is five thousand dollars (\$5,000) or less, then the appraisal provided in this section shall not be required. [R.S., § 1759; R.C., § 1917g, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917g; C.S., § 3422; I.C.A., § 30-707; am. 1999, ch. 215, § 1, p. 573.]

#### STATUTORY NOTES

**Cross References.** — Lease of county property, § 31-836.

#### JUDICIAL DECISIONS

##### ANALYSIS

Authority of county commissioners.  
— Collaboration with associates.  
— Unauthorized delegation of discretionary powers.  
— Purchase of personal property.  
— Rejection of claim for improper purchases.  
County officers' authority.  
Powers of county.  
— Delegation.  
— Extent.

—Right to purchase at execution sale.  
Purchase of site.

#### **Authority of County Commissioners.**

In constituting the board of county commissioners the chief executive authority of the county government, the legislature vested the board with power to purchase personal property necessary for the use of the county, and with power to manage and control that property. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### **—Collaboration with Associates.**

A county commissioner is required to look after and supervise the government and business affairs of the county, in collaboration with his associates on the board of county commissioners. *Stover v. Washington County*, 63 Idaho 145, 118 P.2d 63 (1941).

#### **—Unauthorized Delegation of Discretionary Powers.**

The county commissioners are without authority to delegate their discretionary powers, and any attempt to do so is void. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1932).

#### **—Purchase of Personal Property.**

The commissioners are the only county officers empowered to purchase personal property necessary for the use of the county and to manage and control that property. Sheriff has no right to purchase an automobile for his use. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### **—Rejection of Claim for Improper Purchases.**

Under statute vesting executive authority in boards of county commissioners with power to buy needed personal property and to sell county property not needed, a claim against the county for an automobile purchased by the sheriff was properly rejected as an unauthorized purchase, notwithstanding the fact that the automobile was used by the sheriff, that allowance for such an item of expense had been made in the budget, and that unexpended balance in fund for other probable expense was sufficient to cover the claim.

*Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### **County Officers' Authority.**

County officers have no express or implied authority to purchase personal property for the use of a county or to manage and direct the government of the county in an executive capacity, but such authority is expressly vested in the respective board of county commissioners. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### **Powers of County.**

##### **—Delegation.**

The placing of county property in the hands of a trustee to be liquidated for the benefit of the county and other creditors was an attempt, in violation of law and the public policy of this state, to delegate powers which it possesses with respect to county property and which involve judgment and discretion. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1932).

##### **—Extent.**

County board cannot place property of county beyond its control and beyond the control of its successors in office. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1932).

##### **—Right to Purchase at Execution Sale.**

Under the provisions of this section, a county may purchase property at an execution sale under a judgment in its favor. *Evans v. Power County*, 50 Idaho 690, 1 P.2d 614 (1931).

##### **Purchase of Site.**

Purchase of site upon which to build county courthouse is not an ordinary and necessary expense of county. *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454 (1897).

**Cited in:** *Stover v. Washington County*, 63 Idaho 145, 118 P.2d 63 (1941); *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968); *Swensen v. Buildings, Inc.*, 93 Idaho 466, 463 P.2d 932 (1970).

### **RESEARCH REFERENCES**

**A.L.R.** — Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678.

Applicability of zoning regulation to non-governmental lessee of government-owned property, 84 A.L.R.3d 1187.

**31-807A. Commissioners must be disinterested.** — No member of the board must be interested, directly or indirectly, in property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on



behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes unless otherwise authorized by law. [I.C., § 31-807A, as added by 1995, ch. 61, § 2, p. 134.]

### STATUTORY NOTES

**Cross References.** — Officers not to be interested in contracts, § 59-201.

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13

through 22 of this act shall be in full force and effect on and after March 9, 1995, retroactive to January 1, 1995, and that § 12 should be in full force and effect July 1, 1995. Approved March 9, 1995.

### JUDICIAL DECISIONS

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Allowance of illegal compensation.

Allowance of money advanced.

Conveyances to wife of commissioner.

#### **Allowance of Illegal Compensation.**

Order of board of county commissioners allowing one of their number compensation to which he is not entitled by law is void. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912).

#### **Allowance of Money Advanced.**

Where county was engaged in litigation and the necessity for the payment of a small amount of costs arose, and a member of board

of commissioners advanced the required sum, allowance of the sum so advanced by board will not be reversed on appeal. *Osborn v. Ravenscraft*, 5 Idaho 612, 51 P. 618 (1897).

#### **Conveyances to Wife of Commissioner.**

Conveyance of county property to county commissioner's wife is absolutely void. *Clark v. Utah Constr. Co.*, 51 Idaho 587, 8 P.2d 454 (1932).

**31-808. Sale of county property — General procedure — Sale of property acquired through tax deed — Procedure after attempted auction — Exchange of county property — Sale of certain odd-lot property — Sale, exchange or donation of property to other units of government.** — (1) A board of county commissioners shall have the power and authority to sell or offer for sale at public auction any real or personal property belonging to the county not necessary for its use. However, personal property not exceeding two hundred fifty dollars (\$250) in value may be sold at private sale without notice or public auction. Prior to offering the property for sale, the board of county commissioners shall advertise notice of the auction in a newspaper, as defined in section 60-106, Idaho Code, either published in the county or having a general circulation in the county, not less than ten (10) calendar days prior to the auction. If the property to be sold is real property, the notice to be published shall contain the legal description as well as the street address of the property. If the property is outside the corporate limits of a city and does not have a street address, then the description shall also contain the distance and direction of the location of the real property from the closest city. If the property to be sold is acquired by tax deed, the notice required to be published shall include, next to the description of the property, the name of the taxpayer as

it appears in the delinquent tax certificate upon which the tax deed was issued. The property shall be sold to the highest bidder. However, the board of county commissioners may reserve the right to reject any and all bids and shall have discretionary authority to reject or accept any bid which may be made for an amount less than the total amount of all delinquent taxes, late charges, costs and interest which may have accrued against any property so offered for sale, including the amount specified in the tax deed to the county.

(2) Proceeds from the sale of county property not acquired by tax deed shall be paid into the county treasury for the general use of the county. If the property to be sold has been acquired by tax deed, pursuant to the provisions of chapter 10, title 63, Idaho Code, the proceeds from the sale, after reimbursement to the county for the cost of advertising and sale, shall be apportioned to the taxing districts in which the property is situated according to the levy applied to the year of delinquency upon which the tax deed was issued to the county.

(3) Any property sold may be carried on a recorded contract with the county for a term not to exceed ten (10) years and at an interest rate not to exceed the rate of interest specified in section 28-22-104(1), Idaho Code. The board of county commissioners shall have the authority to cancel any contract if the purchaser fails to comply with any of the terms of the contract and the county shall retain all payments made on the contract. The title to all property sold on contract shall be retained in the name of the county until full payment has been made by the purchaser. However, the purchaser shall be responsible for payment of all property taxes during the period of the contract.

(4) Any sale of property by the county shall vest in the purchaser all of the right, title and interest of the county in the property, including all delinquent taxes which have become a lien on the property since the date of issue of the tax deed, if any.

(5) In addition to the purchase price, a purchaser of county property, including property acquired by tax deed, shall pay all fees required by law for the transfer of property. No deed for any real estate purchased pursuant to the provisions of this section shall be delivered to a purchaser until such deed has been recorded in the county making the sale.

(6) Should the county be unable to sell at a public auction any real or personal property belonging to the county, including property acquired by tax deed, it may sell the property without further notice by public or private sale upon such terms and conditions as the county deems necessary. Distribution of the proceeds of sale shall be as set forth in subsection (2) of this section.

(7) The board of county commissioners may at its discretion, when in the county's best interest, exchange and do all things necessary to exchange any of the real property now or hereafter held and owned by the county for real property of equal value, public or private, to consolidate county real property or aid the county in the control and management or use of county real property.

(8) The board of county commissioners may, by resolution, declare certain parcels of real property as odd-lot property, all or portions of which are not

needed for public purposes and are excess to the needs of the county. For purposes of this subsection, odd-lot property is defined as that property that has an irregular shape or is a remnant and has value primarily to an adjoining property owner. Odd-lot property may be sold to an adjacent property owner for fair market value that is estimated by a land appraiser licensed to appraise property in the state of Idaho. If, after thirty (30) days' written notice, an adjoining property owner or owners do not desire to purchase the odd-lot property, the board of county commissioners may sell the property to any other interested party for not less than the appraised value. When a sale of odd-lot property is agreed to, a public advertisement of the pending sale shall be published in one (1) edition of the newspaper as defined in subsection (1) of this section, and the public shall have fifteen (15) days to object to the sale in writing. The board of county commissioners shall make the final determination regarding the sale of odd-lot property in an open meeting.

(9) In addition to any other powers granted by law, the board of county commissioners may at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision or taxing district of the state of Idaho or any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, with or without compensation, any real or personal property or any interest in such property owned by the county or acquired by tax deed, after adoption of a resolution by the board of county commissioners that the grant or exchange of property is in the public interest. Notice of such grant or exchange shall be as provided in subsection (1) of this section and the decision may be made at any regularly or specially scheduled meeting of the board of county commissioners. The execution and delivery by the county of the deed conveying an interest in the property shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the state, county or any other political subdivision or taxing district and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance. However, if the property conveyed is subject to a lien for one (1) or more unsatisfied special assessments, the lien shall continue until all special assessments have been paid in full. At no time shall a lien for a special assessment be extinguished prior to such special assessment having been paid in full. Any property conveyed to any local historical society by the county shall revert to the county when the property is no longer utilized for the purposes for which it was conveyed.

(10) When the county has title to mineral rights severed from the property to which they attach, and the mineral rights have value of less than twenty-five dollars (\$25.00) per acre, the board of county commissioners may act to return the mineral rights to the land from which they were severed in the following manner: the proposed action must appear on the agenda of a regular meeting of the board of county commissioners; and the motion to make the return must be adopted unanimously by the board voting in open meeting. [I.C., § 31-808, as added by 1999, ch. 215, § 3, p. 573; am. 2001, ch. 333, § 1, p. 1173; am. 2003, ch. 58, § 1, p. 202; am. 2003, ch. 68, § 1, p. 227; am. 2004, ch. 318, § 4, p. 892.]



## STATUTORY NOTES

**Cross References.** — Conveyance or transfer of real or personal property to another governmental unit, §§ 67-2322 — 67-2325.

Lease of county property, § 31-836.

Notice by mail, § 60-109A.

Publication of notices, §§ 60-105 — 60-112.

Sale or replacement of real or personal property by county commissioners, §§ 31-829, 31-830.

**Prior Laws.** — Former § 31-808, which comprised I.C., § 31-808, R.S., § 1759; R.C., § 1917h, as added by 1913, ch. 143, § 2, p. 507, reen. C.L., § 1917h; C.S., § 3423; am. 1925, ch. 180, § 1, p. 330; am. 1927, ch. 159, § 1, p. 212; am. 1929, ch. 216, § 1, p. 435; am. 1931, ch. 172, § 1, p. 285; I.C.A., § 30-708; am. 1933, ch. 31, § 1, p. 41; am. 1937, ch. 82, § 1, p. 109; am. 1939, ch. 95, § 1, p. 159; am. 1941, ch. 174, § 1, p. 348; am. 1945, ch. 33, § 1, p. 41; am. 1953, ch. 83, § 1, p. 107; am.

1965, ch. 135, § 1, p. 263; am. 1969, ch. 209, § 1, p. 606; am. 1970, ch. 192, § 1, p. 557; am. 1973, ch. 176, § 1, p. 387; am. 1976, ch. 79, § 1, p. 252; am. 1982, ch. 280, § 1, p. 712; am. 1988, ch. 241, § 1, p. 469; am. 1989, ch. 73, § 6, p. 117; am. 1993, ch. 256, § 2, p. 881, was repealed by S.L. 1999, ch. 215, § 2, p. 573, effective July 1, 1999.

**Amendments.** — This section was amended by two 2003 acts — ch. 58, § 1, and ch. 68, § 1, both effective July 1, 2003 — which do not conflict and have been compiled together.

The 2003 amendment, by ch. 58, § 1, added present subsection (10).

The 2003 amendment, by ch. 68, § 1, deleted former subsection (10).

**Effective Dates.** — Section 14 of S.L. 2004, ch. 318, declared an emergency. Approved March 24, 2004.

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Authority of clerk to advertise credit sale.

Credit sales.

Excess property.

— Disposal.

Federal price control act.

Local assessment.

Mortgagee questioning title.

Order of board presumed.

Placing property in hands of trustee for liquidation prohibited.

Presumption officers perform duty.

Refunds.

Sale contrary to advertisement void.

Sale of lands acquired for taxes.

Tax deeds.

— Contracts.

— Held valid.

Taxing districts.

### Authority of Clerk to Advertise Credit Sale.

Where the clerk has been authorized by the board of county commissioners to sell property belonging to the county on credit, the sale must be so advertised. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

### Credit Sales.

Where the clerk has authority from the board of county commissioners to sell land on credit, fairness and common honesty demand that the sale be so advertised, and that all who desired to bid be invited to do so on equal terms. This is necessary, not only for the protection of bidders, but in the interest of the

public and to the end that the highest possible price be received for the property. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

Sale made on a bid to purchase on the installment plan after advertisement that the property was to be sold for cash was invalid. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

### Excess Property.

#### — Disposal.

This section gives commissioners exclusive right to sell county property no longer needed by the county. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

**Federal Price Control Act.**

A maximum price regulation, issued under the Federal Emergency Price Control Act, applies to sales of tractors by a county. *Hulbert v. Twin Falls County*, 327 U.S. 103, 66 S. Ct. 444, 90 L. Ed. 560 (1946).

**Local Assessment.**

Purchaser from county of property acquired through tax deed takes title free from drainage district assessment and local improvement assessment liens. *Smith v. City of Nampa*, 57 Idaho 736, 68 P.2d 344 (1937).

**Mortgagee Questioning Title.**

A mortgagee's right to redeem being terminated, not by deed, but by the purchaser's bid for land acquired by a county under tax deeds, the mortgagee in the purchaser's suit to quiet title could not question the validity of the deed because signed only by the county commissioners' chairman. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**Order of Board Presumed.**

Where a county's deed conveying land acquired by tax deeds recited that the clerk of the board of county commissioners made sale, the presumption was indulged in the absence of contrary evidence in a suit to quiet title that the clerk acted by the order of the board, and that the sale occurred at the courthouse door pursuant to statute. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**Placing Property in Hands of Trustee for Liquidation Prohibited.**

County commissioners cannot place county property in the hands of a trustee to be liquidated for the benefit of the county and other creditors, as such a commitment would violate this section. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1933).

**Presumption Officers Perform Duty.**

Where a county's deed conveying land acquired by tax deeds was introduced in a suit to quiet title, and recited that, pursuant to statute, notice of sale was published in a weekly newspaper thirty days before sale, or posted, presumption was that the officers followed the statute which did not permit posting, and that in the absence of an affidavit of giving of notice, the affidavit which the deed referred to showed compliance with the law. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**Refunds.**

The right of refund of purchaser of land at tax sale is governed by the statutes in force at the time the deed is declared to be void. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

As respects the right of purchaser at tax sale to a refund, the statute of limitations

does not begin to run until after the right to same accrues. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

The provisions of statute providing for refund to purchaser of tax sale certificate found to be void are mandatory and require that purchaser of tax deed, declared void, be refunded all payments, interest and taxes. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

The right to refund of payment made for tax deed does not accrue to the purchaser until it is definitely determined that such deed is void. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

It is only after determination that a tax sale is void that the right of the purchaser to refund can be declared forfeited. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

Where there is statutory provision for refund to purchaser of tax deed, the rule of caveat emptor does not apply. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

**Sale Contrary to Advertisement Void.**

An attempted sale of county property pursuant to an agreement with prospective purchaser for credit instead of cash, in violation of notice of sale and without authority of board of county commissioners, was void. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

**Sale of Lands Acquired for Taxes.**

In the sale of land acquired by a county for taxes, the same is not governed by § 31-835 requiring minimum price on land offered for sale and not sold. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**Tax Deeds.****—Contracts.**

Under a contract to purchase lands for delinquent taxes, the payments so made are not to be considered voluntary payments so as to defeat right to recovery where application for refund is properly made after sale is declared void. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

**—Held Valid.**

In a suit to quiet title, tax deeds are valid as against a tax by a mortgagee not showing the statutory request entitling him to notice of expiration of redemption period, and showing no prejudice by any irregularity in the affidavit reciting that lawful notice was given. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

**Taxing Districts.**

Drainage district is a "taxing district" within the meaning of this section. *Lister v. Riddle*, 50 Idaho 431, 296 P. 771 (1931).

School district taxes and drainage district

assessments held to be “taxes” within the meaning of the term as used in this section. *Heffner v. Ketchen*, 50 Idaho 435, 296 P. 768 (1931).

Law regulating auctions applies to sales, under this section. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

**31-808A, 31-808B. Exchange of county land — Declaration and sale of excess county property. [Repealed.]**

**STATUTORY NOTES**

**Compiler’s Notes.** — Section 31-808A which comprised I.C., § 31-808A, as added by 1985, ch. 111, § 1, p. 217 was repealed by S.L. 1999, ch. 215, § 2, p. 573, effective July 1, 1999.

Section 31-808B which comprised I.C., § 31-808B, as added by 1991, ch. 302, § 1, p. 796 was repealed by S.L. 1999, ch. 215, § 2, p. 573, effective July 1, 1999.

**31-809. Audit of county funds.** — To examine and audit the accounts of all officers having the care, management, collection or disbursement of moneys belonging to the county, or appropriated by law, or otherwise, for its use and benefit. [R.S., § 1759; R.C., § 1917i, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917i; C.S., § 3424; I.C.A., § 30-715.]

**STATUTORY NOTES**

**Cross References.** — Duties of department of finance as successor to state examiner, § 67-2701 et seq.

**JUDICIAL DECISIONS**

ANALYSIS

- Appeal.
- Grounds not included in notice.
- Procedure.
- Employment of accountant.
- Jurisdiction of board.

**Appeal.**

**—Grounds Not Included in Notice.**

The reasons or grounds for appeal from an order of the board of county commissioners need not be stated in the notice of appeal. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

**—Procedure.**

On an appeal from an order of the board of county commissioners, the case must be tried anew in the district court, and, in such trial, the board or person in whose favor a claim has been allowed has the affirmative and must produce evidence to make a prima facie case. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

**Employment of Accountant.**

Statutes providing for state examiner did

not repeal power of boards of county commissioners under this section and board may employ accountant. *Prothero v. Board of Comm’rs*, 22 Idaho 598, 127 P. 175 (1912).

**Jurisdiction of Board.**

The board of county commissioners is a constitutional board vested by statute with jurisdiction to settle and allow claims. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

**Cited in:** *Kootenai County v. Hope Lumber Co.*, 13 Idaho 262, 89 P. 1054 (1907); *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913); *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Wonnacott v. Kootenai County*, 32 Idaho 342, 182 P. 353 (1919).



**31-810. Payment of claims.** — To examine, settle and allow all accounts legally chargeable against the county, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same. [R.S., § 1759; R.C., § 1917j, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917j; C.S., § 3425; I.C.A., § 30-716.]

### STATUTORY NOTES

**Cross References.** — Payment of claims against county, § 31-1501 et seq.

### JUDICIAL DECISIONS

#### ANALYSIS

Action of board not subject to collateral attack.

Claims.

— Allowance final.

— Burden of proof.

— Improperly included in judgment.

— Public utility.

County warrants.

Delinquent tax lists.

#### Action of Board Not Subject to Collateral Attack.

Where the board of county commissioners has in good faith acted upon a matter within its jurisdiction, though improvidently, and no appeal is taken, the order becomes final and is not subject to collateral attack. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

#### Claims.

##### — Allowance Final.

When no appeal was taken from allowance by board of commissioners of claims against county, such allowance became final and had the effect of a final judgment after the time for appeal. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

##### — Burden of Proof.

On an appeal from an order of the board of county commissioners allowing watermaster's claim for compensation, the watermaster had the burden of showing that sufficient water was not available for all users and that therefore his services were necessary, and the burden did not shift to water users to show the contrary. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

##### — Improperly Included in Judgment.

Watermaster's compensation for April and May, claims for which had previously been

allowed by board of county commissioners, should not have been included in the district court's judgment affirming the order of the board allowing claims for compensation, though no warrants had been issued in payment of the earlier claims. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

#### — Public Utility.

This section is applicable to claim of public utility for hauling sand and gravel. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

#### County Warrants.

Warrants drawn by county auditor which failed to specify the nature of the liability for which they were issued were void and subsequent ratification by the board of commissioners could not validate them. *Bingham County v. First Nat'l Bank*, 122 F. 16 (9th Cir. 1903).

#### Delinquent Tax Lists.

Authority to fix compensation for delinquent tax list is vested solely in board of county commissioners. *Jolly v. Latah County*, 5 Idaho 301, 48 P. 1063 (1897).

**Cited in:** *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Union Pac. R.R. v. Idaho*, 654 F. Supp. 1236 (D. Idaho 1987).

### RESEARCH REFERENCES

**A.L.R.** — Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 A.L.R.3d 965.

Governmental tort liability for injuries caused by negligently released individual, 6 A.L.R.4th 1155.

Actual notice or knowledge by government-

tal body or officer of injury or incident result- notice of claim for injury — modern status, 7  
ing in injury as constituting required claim or A.L.R.4th 1063.

**31-811. Levy of taxes.** — To levy such tax annually on the taxable property of the county as may be necessary not exceeding the amount authorized by law; and to levy such taxes as are required to be levied by special or local statutes. [R.S., § 1759; R.C., § 1917k, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917k; C.S., § 3426; I.C.A., § 30-717; am. 1989, ch. 73, § 7, p. 117.]

STATUTORY NOTES

**Cross References.** — Fish hatcheries, Levy for servicemen’s memorials, §§ 65-  
county commissioners to maintain and levy 103, 65-104.  
tax, §§ 36-1701, 36-1702. Levy of taxes, § 63-901 et seq.

JUDICIAL DECISIONS

**Cited in:** Reynolds Constr. Co. v. Twin District Bd. of Health v. Chancey, 94 Idaho  
Falls County, 92 Idaho 61, 437 P.2d 14 (1968); 944, 500 P.2d 845 (1972).

DECISIONS UNDER PRIOR LAW

**Road Tax.** Dist. v. Anderson, 22 Idaho 109, 125 P. 219  
County commissioners have authority to (1912).  
levy tax for road purposes. Shoshone Hwy.

RESEARCH REFERENCES

**A.L.R.** — Estoppel of state or local govern-  
ment in tax matters, 21 A.L.R.4th 573.

**31-812. Equalization of assessments.** — To equalize the assessments as provided by title 63, Idaho Code. [R.S., § 1759; R.C., § 1917l, as added by 1913, ch. 143, § 2, p. 507; reen. C.L., § 1917l; C.S., § 3427; I.C.A., § 30-718; am. 1989, ch. 73, § 8, p. 117.]

STATUTORY NOTES

**Cross References.** — To act as board of  
equalization, § 63-501 et seq.

JUDICIAL DECISIONS

ANALYSIS

Commissioners and equalization, separate and distinct boards.

**Commissioners and Equalization, Sepa- counties, and Const., Art. 18, § 6, providing  
rate and Distinct Boards.** for a board of county commissioners, board of  
Under Const., Art. 7, § 12, providing that equalization and board of county commission-  
boards of county commissioners for these sev- ers are separate and distinct boards with  
eral counties of the state shall constitute separate and distinct functions and duties.  
boards of equalization for their respective General Custer Mining Co. v. Van Camp, 2

Idaho (Hasb.) 40, 3 P. 22 (1884); *Feltham v. Board of County Comm'rs*, 10 Idaho 182, 77 P. 332 (1904).

**31-813. Control of suits.** — To direct and control the prosecution and defense of all suits to which the county is a party in interest, and employ counsel to conduct the same, with or without the prosecuting attorney, as they may direct. [R.S., § 1759; R.C., § 1917m, as added by 1913, ch. 143, § 2, p. 508; compiled and reen. C.L., § 1917m; C.S., § 3428; I.C.A., § 30-719.]

## STATUTORY NOTES

**Cross References.** — May employ counsel when necessary, Const., Art. 18, § 6.

## JUDICIAL DECISIONS

### ANALYSIS

Compromise of actions.  
County as proper party plaintiff.  
Employment of counsel.  
Res judicata.

### Compromise of Actions.

Under powers given to board of commissioners, it may settle a case pending against county, on appeal, and where it does settle such case, and it appears from the record that no beneficial results can accrue to county from a determination of the appeal, the appeal will be dismissed. *Board of County Comm'rs v. Bassett*, 14 Idaho 324, 93 P. 774 (1908).

### County as Proper Party Plaintiff.

It is doubtful whether board of commissioners of a county, as such, have authority, in the name of the board, to commence a suit or proceeding for the benefit of the county. *Board of County Comm'rs v. Mayhew*, 5 Idaho 572, 51 P. 411 (1897).

### Employment of Counsel.

Board of county commissioners has no authority to employ attorney to act by the year as legal adviser for county. *Meller v. Board of Comm'rs*, 4 Idaho 44, 35 P. 712 (1894).

Power to employ counsel is restricted to suits in which county is a party in interest and does not include criminal cases nor authorize board to employ counsel in such cases. *Conger v. Board of County Comm'rs*, 5 Idaho 347, 48 P. 1064 (1896).

Discretion of board of county commissioners in employing special counsel to represent county in litigation will not be disturbed unless abused. *Anderson v. Shoshone County*, 6 Idaho 76, 53 P. 105 (1898).

There is nothing in statutes that places counties in any different category than individuals and they can contract on contingent

basis if fee is reasonable. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

County Commissioners have both constitutional (Const., Art. 18, § 6) and statutory authority to employ counsel in suits wherein county is interested. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

Constitution, art. 18, § 6 limits the authority of county commissioners to employ counsel and is a denial of authority of all other county officials to do so, and the commissioners' authority is limited to matters over which they have jurisdiction and then only when necessary and to the facts creating the necessity must be made a matter of record. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

### Res Judicata.

Where the county's duly elected county commissioners were made parties to an action in the state court by a tax sale purchaser to require the commissioners to deliver tax deeds, the state court had jurisdiction over the parties to, and subject-matter of, the action; and where no appeal was taken from the judgment directing commissioners to execute the deeds, the judgment was res judicata and could not be collaterally attacked in a federal court in a subsequent suit instituted by the county commissioners thereafter in office. *Boundary County v. Woldson*, 144 F.2d 17 (9th Cir. 1944), cert. denied, 324 U.S. 843, 65 S. Ct. 678, 89 L. Ed. 1405 (1945).

**Cited in:** *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908); *Waigand v. City of Nampa*, 64 Idaho 432, 133 P.2d 738 (1943).



### OPINIONS OF ATTORNEY GENERAL

The board of county commissioners does not have the authority to hire civil counsel outside of the county prosecutor's office on a long-term continuous basis unless they comply with the standard of "necessity" mandated by Const., Art. 18, § 6 and before hiring such counsel the commissioners must conduct a

case-by-case analysis and state the facts which create the necessity of hiring such counsel and must make these reasons a matter of record which are reviewable by the courts; mere comfort level or convenience does not rise to the level of necessity in this context. OAG 93-8.

**31-814. Insurance of county property.** — Where in the discretion of the commissioners it is desirable, they are hereby authorized to make contracts of insurance with any insurance company authorized to transact business within the state providing for insurance against loss by fire, and against any and all hazards on any or all property belonging to the county, including insurance to cover liability for damages to property and for bodily injury arising as a result of the ownership, operation or use of county vehicles. In consideration of the premium at which any such policy shall be written, it shall be a part of the policy contract between the county and the insurance company that the insurance company shall not be entitled to the defense of governmental immunity of the insured. Immunity of the county, against liability damages, is hereby waived to the extent of the liability insurance carried by the county on such vehicles. Nothing herein contained shall be construed to require the making of such contracts of insurance by the commissioners on behalf of the county; provided that the board may create or participate in a self-insured risk program. [R.S., § 1759; R.C., § 1917n, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917n; C.S., § 3429; I.C.A., § 30-720; am. 1951, ch. 242, § 1, p. 507; am. 1989, ch. 145, § 1, p. 352; am. 2006, ch. 21, § 1, p. 79.]

### STATUTORY NOTES

**Cross References.** — Liability of governmental entities, tort claims, §§ 6-901 — 6-928.

Purchase of insurance by political subdivisions, §§ 6-923 — 6-928.

**Amendments.** — The 2006 amendment, by ch. 21, deleted "with a fund balance which

may be carried over from year to year, said fund balance not to exceed ten million dollars (\$10,000,000)" from the end of the section.

**Effective Dates.** — Section 2 of S.L. 1989, ch. 145 declared an emergency and provided the act should be effective retroactive to January 1, 1989. Approved March 28, 1989.

### RESEARCH REFERENCES

**A.L.R.** — Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 A.L.R.3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties, 71 A.L.R.3d 90.

**31-815. Licensing of toll roads, bridges, and ferries.** — The board shall grant licenses and franchises, as provided by law, for construction of, keeping and taking tolls on roads, bridges and ferries, and fix the tolls and licenses; provided that the board need not grant licenses and franchises, as provided by law, for construction of, keeping and taking tolls on roads,

bridges and ferries, and fix the tolls and licenses for those areas encompassed within the boundaries of a highway district formed pursuant to title 40, Idaho Code. [R.S., § 1759; R.C., § 1917o, as added by 1913, ch. 143, § 2, p. 508; compiled and reen. C.L., § 1917o; C.S., § 3430; I.C.A., § 30-721; am. 1989, ch. 74, § 5, p. 128.]

**31-815A. Transfer of license applications.** — Whenever an application is made to the board for an order, franchise or license, relating to any toll road, bridge, ferry, or other subject over which the board has jurisdiction, in which a majority of the board are not disinterested, the application, by order of the board, must be transferred to the district court of the county; the clerk of the board must thereupon certify the application and all orders and papers relating thereto to the court to which the transfer is ordered; and thereafter the court to which the same is certified has full jurisdiction to hear and determine the application. [I.C., § 31-815A, as added by 1995, ch. 61, § 3, p. 134.]

#### STATUTORY NOTES

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13 through 22 of this act shall be in full force and

effect on and after March 9, 1995, retroactive to January 1, 1995, and that § 12 should be in full force and effect on July 1, 1995. Approved March 9, 1995.

**31-816. Fixing of salaries.** — To fix the compensation of all county officers and employees, and provide for the payment of the same. [R.S., § 1759; R.C., § 1917p, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917p; C.S., § 3431; I.C.A., § 30-722; am. 1989, ch. 73, § 9, p. 117.]

#### STATUTORY NOTES

**Cross References.** — Salaries of county officers, § 31-3101 et seq.

**31-817. Filling of vacancies.** — To fill by appointment all vacancies that may occur in county offices, except in members of the county board. [R.S., § 1759; R.C., § 1917q, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917q; C.S., § 3432; I.C.A., § 30-723; am. 1989, ch. 73, § 10, p. 117.]

#### STATUTORY NOTES

**Cross References.** — To fill vacancies in county and precinct offices, §§ 59-905 — 59-908.

#### JUDICIAL DECISIONS

**Order Filling Vacancy.**

Order appointing road overseer need not contain recital that there was a vacancy in that office, presumption being that board

acted within the law and that a vacancy did exist. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

**31-818. Authority to appoint administrative assistants and staff — County commissioner as administrator may be appointed. —**

(1) The board of county commissioners shall be empowered to employ assistants, including administrative assistants, and clerical staff to aid them in fulfilling their duties.

(2) The board may appoint a member of the board of county commissioners to act as administrator. A county commissioner appointed as administrator under this subsection shall have and exercise only those administrative powers and duties as may be and are assigned by the board of county commissioners by ordinance or resolution. The provisions of chapters 50 through 57, title 31, Idaho Code, shall not apply to the appointment of a county commissioner as administrator under this subsection. [R.S., § 1759; R.C., § 1917r, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917r; C.S., § 3433; I.C.A., § 30-724; am. 1989, ch. 73, § 11, p. 117; am. 1996, ch. 283, § 10, p. 914.]

**STATUTORY NOTES**

**Cross References.** — Contracts for county printing, § 60-102.

1996, ch. 283 declared an emergency. Approved March 15, 1996.

**Effective Dates.** — Section 11 of S.L.

**JUDICIAL DECISIONS**

**Provision for Compensation.**

Authority to fix compensation for publishing delinquent tax list is vested solely in

board of county commissioners. *Jolly v. Latah County*, 5 Idaho 301, 48 P. 1063 (1897).

**31-819. Publication of proceedings. —** To cause to be published monthly such statement as will clearly give notice to the public of all its acts and proceedings, and, shall include a brief financial summary indicating the total amount spent from each county fund during the month. A more detailed report of expenditures may be published if deemed necessary by the board. Annually, a full financial report shall be prepared and available for public inspection which shows for each fund the sources of income, expenditures during the year, current fund balances, and other financial information as determined by the board. The board shall cause to be published annually not less than the consolidated balance sheet of said annual report. Such statements as well as all other public notices of proceedings of, or to be had before the board, not otherwise specially provided for, must be published in one (1) issue of such newspaper published in the county and which newspaper also has the largest average paid circulation in the county for the last six (6) months of the prior calendar year of the year in which such statements and other public notices of proceedings are required to be made by this act. [R.S., § 1759; R.C., § 1917s, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917s; C.S., § 3434; I.C.A., § 30-725; am. 1935, ch. 76, § 1, p. 131; am. 1951, ch. 294, § 1, p. 651; am. 1979, ch. 90, § 1, p. 217; am. 1989, ch. 73, § 12, p. 117; am. 1990, ch. 347, § 1, p. 937.]



## STATUTORY NOTES

**Cross References.** — Publication of official notices, rates, and qualifications of newspapers, §§ 60-105, 60-106.

**Effective Dates.** — Section 3 of S.L. 1979, ch. 90 declared an emergency. Approved March 20, 1979.

## JUDICIAL DECISIONS

### ANALYSIS

Abandonment of bridge.  
Actions of county commissioners.  
—Contracts.  
Circulation of paper as a factor.  
—Effect of controversy between newspapers.  
Financial summary.  
Publication of statement.

### Abandonment of Bridge.

Abandonment of a bridge without publication of notice as provided in this section was invalid. *Nicolaus v. Bodine*, 92 Idaho 639, 448 P.2d 645 (1968).

### Actions of County Commissioners.

The strictures of this section, when construed in *pari materia* with former § 31-1509, require the publication of the acts of boards of county commissioners to the end that persons aggrieved by such actions may have the opportunity to bring an appeal to the district courts and the time for bringing such appeals is limited. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

At most, noncompliance with this section merely extends the time within which an appeal may be taken from the actions of the county commissioners. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

### —Contracts.

Contracts between county and independent appraiser for revaluation of county real property were not voided by board of commissioners' failure to comply with this section requiring publication of all board's acts and proceedings, nor was the county precluded from using the information secured under such contract, particularly where there was no showing that taxpayers were prejudiced in regard to their right to appeal by asserted failure of publication. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

### Circulation of Paper as a Factor.

It was improper to award county printing contract to newspaper making lower bid, where such newspaper had much smaller circulation in county than unsuccessful bid-

der. *Lamphere v. Latah County*, 51 Idaho 65, 2 P.2d 317 (1931).

Actual circulation of a newspaper is not decisive that effective notice is given, since the spread or diffusion throughout the county may prove more effective notice than a much larger circulation confined mostly to one town. *Robinson v. Latah County*, 56 Idaho 759, 59 P.2d 19 (1936).

### —Effect of Controversy between Newspapers.

Where there is a controversy between two newspapers as to which one would most likely give effective notice of county proceedings, circulation of the particular newspaper to which the board of county commissioners awards county printing and circulation of newspaper contesting the award are the only circulations which can be considered, and circulation of two separate newspapers cannot be combined. *Robinson v. Latah County*, 56 Idaho 759, 59 P.2d 19 (1936).

### Financial Summary.

The lack of a financial summary in the board of commissioners' report did not prejudice the plaintiff in regard to his decision to appeal the renewal of beer licenses, and thus did not toll the 20-day filing period under former § 31-1509. *Fox v. Board of County Comm'rs*, 114 Idaho 940, 763 P.2d 313 (Ct. App. 1988).

### Publication of Statement.

Synopsis of proceedings of board of county commissioners should be published in only one newspaper of county *Miller v. Smith*, 7 Idaho 204, 61 P. 824 (1900).

**Cited in:** *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908); *Gilbert v. Canyon County*, 14 Idaho 429, 94 P. 1027 (1908); *Bobbitt v. Blake*, 25 Idaho 53, 136 P. 211 (1913); *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927); *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948); *Utah Oil Ref. Co. v. Hendrix*, 72 Idaho 407,

242 P.2d 124 (1952); *In re Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958); *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002).

**31-820. By-laws.** — To make and enforce such rules and regulations for the government of their body, the preservation of order and the transaction of business as may be necessary. [R.S., § 1759; R.C., § 1917t, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917t; C.S., § 3435; I.C.A., § 30-726.]

**31-821. Adoption of seal.** — To adopt a seal for their board. [R.S., § 1759; R.C., § 1917u, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917u; C.S., § 3436; I.C.A., § 30-727.]

**31-822. Maintenance of fair grounds — Transfer of property to fair district.** — To contract to purchase a site, grounds or parks on which to hold public fairs or exhibitions, to care for and maintain the same, regulate the use thereof and, in their discretion, to let, demise or lease the same to the state of Idaho or the department of agriculture for such public fair or exhibition purposes upon such terms and conditions and for such consideration as in their judgment shall best promote the holding of such public fairs or exhibitions. To make a special levy of one hundredths per cent (.01%) of market value for assessment purposes of taxable property within the county for the purpose of purchasing a site, grounds or park on which to hold public fairs or exhibitions and to erect upon said site, grounds or park suitable buildings and provide for the maintenance of said buildings. The funds raised by this levy may be allowed to accumulate until enough funds are available to make the desired purchase. On no account shall the funds raised by this levy and for the purpose of purchasing a site for county fairs or exhibitions, or for building upon and improving the same, be used for any other purpose. The board of county commissioners of any county, owning any grounds or parks with or without buildings and improvements thereon, held and maintained for public fairs or exhibitions may, upon such county becoming a member of or a part of a fair district, in their discretion and upon such terms and conditions as to them may be deemed advisable, offer to sell, and sell and transfer and convey by proper conveyance, to such fair district, the grounds or parks owned by such county and used for public fairs or exhibitions, provided, nevertheless, that any conveyance so made shall expressly provide that the grounds or parks shall be used for district fair purposes, and that upon failure of the district to use the said grounds or parks for a district fair for two (2) successive years, the said property so conveyed, shall revert back to the county making the conveyance. [R.C., § 1917w, as added by 1915, ch. 22, p. 74; am. 1917, ch. 149, p. 471; reen. C.L., § 1917v; C.S., § 3437; am. 1927, ch. 71, § 1, p. 89; I.C.A., § 30-728; am. 1949, ch. 265, § 1, p. 534; am. 1989, ch. 73, § 13, p. 117.]

#### STATUTORY NOTES

**Cross References.** — County fair boards, County fairs in districts of two or more  
§ 22-201. counties, § 22-301 et seq.

## JUDICIAL DECISIONS

**Lease to Nonpublic Entity.**

The authority of the board of county commissioners to lease fairground property was not limited to leasing it solely to the state or department of agriculture, but they could also properly lease the property to a horse racing

corporation during the period the property was not used by the public. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

**Cited in:** *Swensen v. Buildings, Inc.*, 93 Idaho 466, 463 P.2d 932 (1970).

**31-823. Maintenance of exhibits in aid of fairs — Encouragement of immigration and trade.** — To levy a tax of not to exceed two hundredths per cent (.02%) of market value for assessment purposes on all the taxable property within their respective counties, for the purpose of creating a fund to be used for collecting, preparing and maintaining an exhibition of the products and industries of the county at any domestic or foreign exposition, for the purpose of encouraging immigration and increasing trade in the products of the state of Idaho, and for the same purposes, in the discretion of the commissioners to pay premiums or prizes for, and any costs or expenses of collecting, preparing, maintaining, exhibiting and advertising of like exhibitions, exhibited by others than the county at any such domestic or foreign exposition. [1911, ch. 95, p. 340; reen. C.L., § 1917w; C.S., § 3438; am. 1927, ch. 19, § 1, p. 24; I.C.A., § 30-729; am. 1989, ch. 73, § 14, p. 117.]

## STATUTORY NOTES

**Cross References.** — Budget of funds for county fair purposes, taxing unit under Idaho Budget Law, § 22-206.

County not to loan its credit, Const., art. 12, § 4.

## JUDICIAL DECISIONS

**Constitutionality.**

This section was held constitutional. *Bevis v. Wright*, 31 Idaho 676, 175 P. 815 (1918).

**31-824. Employment of prisoners.** — To employ inmates of the county jail upon public road work or other county work in the county under such regulations as the board of county commissioners and the sheriff may prescribe. [R.C., § 1917x, as added by 1915, ch. 77, § 1, p. 189; compiled and reen. C.L., § 1917x; C.S., § 3439; I.C.A., § 30-730; am. 1989, ch. 73, § 15, p. 117.]

## STATUTORY NOTES

**Cross References.** — May require prisoners in county jails to work, § 20-617 et seq.

**31-825. Maintenance of county law library.** — To contract to purchase and to purchase and provide for care by clerk of district court of such law books and pamphlets as said commissioners may judge from time to time necessary for use of the district court and the county officials and bar



of the county, and to provide for the care of all such books and pamphlets as may be donated or loaned to the county from time to time. [R.C., § 1917x, as added by 1917, ch. 135, § 1, p. 445; reen. C.L., § 1917y; C.S., § 3440; I.C.A., § 30-731.]

**31-826. Cooperation with agricultural extension work.** — To appropriate funds for demonstration work in agriculture and home economics within said counties for the employment of a county agent or county agents in cooperation with the University of Idaho and the United States department of agriculture, in accordance with the terms and conditions of the act of congress approved May 8, 1914, 38 Stat. L. 372, ch. 79, commonly known as the Smith-Lever Act, the provisions of which had been accepted by the state of Idaho. [1917, ch. 157, § 1, p. 483; compiled and reen. C.L., § 1917z; C.S., § 3441; I.C.A., § 30-732.]

STATUTORY NOTES

<b>Cross References.</b> — Acceptance of Smith-Lever Act, § 33-2904. Cooperation with agricultural extension work, §§ 31-839, 31-840.	<b>Federal References.</b> — The Smith-Lever Act, referred to in this section, is compiled as 7 U.S.C. §§ 341-349.
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**31-827. Cooperation with federal reclamation service. [Repealed.]**

STATUTORY NOTES

<b>Compiler's Notes.</b> — This section, which comprised 1911, ch. 9, § 1, p. 25; compiled and reen. C.L., § 1918; C.S., § 3442; I.C.A.,	§ 30-733, was repealed by S.L. 1989, ch. 73, § 16.
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**31-828. General and incidental powers and duties.** — To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government. [R.S., § 1759; R.C., § 1917v, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1918a; C.S., § 3443; I.C.A., § 30-734.]

STATUTORY NOTES

**Cross References.** — Servicemen's memorials, § 65-101 et seq.

JUDICIAL DECISIONS

ANALYSIS

Authority of county commissioners.  
— County officers.  
— Extent of powers.  
Rejection of claim for improper purchases.

<b>Authority of County Commissioners.</b> In constituting the board of county commissioners the chief executive authority of the	county government, the legislature vested the board with power to purchase personal property necessary for the use of the county, and
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with power to manage and control that property. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### —County Officers.

No county officer has authority to purchase personal property for the use of the county or to manage and direct the government of the county. That authority is expressly in the commissioners by this section. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

#### —Extent of Powers.

Board has only such powers as are expressly or impliedly conferred upon it by statute. *Prothero v. Board of Comm'rs*, 22 Idaho 598, 127 P. 175 (1912).

#### Rejection of Claim for Improper Purchases.

Under statute vesting executive authority

in boards of county commissioners with power to buy needed personal property and to sell county property not needed, a claim against the county for an automobile purchased by the sheriff was properly rejected as an unauthorized purchase, notwithstanding the fact that the automobile was used by the sheriff, that allowance for such an item of expense had been made in the budget, and that unexpended balance in fund for other probable expense was sufficient to cover the claim. *Magoon v. Board of County Comm'rs*, 58 Idaho 317, 73 P.2d 80 (1937).

**Cited in:** *General Custer Mining Co. v. Van Camp*, 2 Idaho (Hasb.) 40, 3 P. 22 (1884); *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913); *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968); *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002).

### OPINIONS OF ATTORNEY GENERAL

County commissioners have power to authorize appointment of deputies and employees for other county offices, to set salaries for these deputies and employees, and to insure that their work schedules are in compliance with the Fair Labor Standards Act. To the extent the commissioners determine that a countywide personnel system is the most efficient and professional way to carry out these responsibilities, commissioners would have power to create such a system and to hire employees to staff it; however, the commissioners could not use such a system to control the other county officers or to judge their job performance. OAG 86-10.

Payment of dues to municipal leagues or associations by cities and counties is an expenditure for a public purpose permitted by the Idaho Constitution and statutes. The use of those dues for lobbying efforts is permissi-

ble if the lobbying is for an appropriate public purpose. OAG 89-7.

Elected officials may discuss potential public policy issues and determine association policy at meetings of the Association of Idaho Cities and Idaho Association of Counties. But local public policy must be determined and adopted only after compliance with Idaho law, including the Idaho Open Meeting Law, Idaho Code §§ 67-2340 through 67-2347, and all other applicable laws in title 31 or 50, Idaho Code. OAG 89-7.

Counties in Idaho probably have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows counties to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

**31-829. Sale or replacement of personal property.** — Whenever any elective county officer has under his jurisdiction or control any personal property belonging to the county which, in his judgment, is of no further use to the county, he may, with the consent of the board of county commissioners, in the name of the county, sell such personal property. Whenever any such official has any personal property belonging to the county under his jurisdiction or control which, in his judgment is obsolete, worn or damaged so as to require replacement and is of greater value on a trade in or exchange for replacements than upon the sale as above permitted he may, incident to purchase of such replacements and with the consent of the board of county commissioners, trade in or exchange such personal property and apply its trade in or exchange value on the purchase price of replacements. If the purchase of such replacements requires calling for bids, the call shall

include bids with proposed allowances for such obsolete, worn or damaged property. All cash received from the sale of personal property must be turned in to the county treasury. [I.C.A., § 30-708A, as added by 1939, ch. 76, § 1, p. 130; am. 1989, ch. 73, § 17, p. 117.]

### STATUTORY NOTES

**Cross References.** — Conveyance or transfer of real or personal property to another governmental unit, §§ 67-2322 — 67-2325.

**Compiler's Notes.** — Sections 31-829 — 31-836 were enacted by Session Laws 1939, ch. 76, § 1; 1939, ch. 126, § 1; 1927, ch. 196, § 1; 1929, ch. 144, §§ 1, 2 and 1927, ch. 159, § 2, and according to their lettered numbering were all to follow what is now § 31-808. But as originally enacted, each of the sections from § 31-802 through what is now § 31-828 were, in substance, subdivisions of R.S., § 1759, reenacted and given lettered section numbers from a to v, by S. L. 1913, ch. 143. All

of these last mentioned sections enumerated powers of the county commissioners. Each section began with the word "To."

The lettered sections inserted after what is now § 31-828 broke this continuity and to suddenly revert to the introductory word "to" after eight intervening sections which did not so begin required one unfamiliar with what had happened to check back and work it out for himself. Consequently, the above mentioned interpolated sections have, in this compilation, been moved to their present location in order that all the "To" sections may be kept together.

**31-830. Award to county sheriff or deputy county sheriff of his handgun and badge upon retirement.** — (1) A county sheriff who retires during or upon the completion of his term of office under the provisions of the public employee retirement system of Idaho or the county's retirement system, whether under disability retirement or otherwise, may, with the consent of the board of county commissioners, be awarded his handgun and sheriff's badge along with the identification card issued by the county sheriff's department. The identification card shall have "RETIRED" printed on it, shall have no fixed expiration date and shall be signed by the county sheriff.

(2) Upon recommendation of the county sheriff and with the consent of the board of county commissioners, a deputy county sheriff holding police officer member status under the public employee retirement system of Idaho pursuant to section 59-1303(3)(b)(ii), Idaho Code, or if the county by which he is employed does not participate in the system, who would qualify for such status under the provisions of that section if the county were a participant in the system, may, upon his retirement, be awarded his handgun and sheriff's badge along with the identification card issued by the county sheriff's department. The identification card shall have "RETIRED" printed on it, shall have no fixed expiration date and shall be signed by the county sheriff. The award shall be available to any deputy county sheriff, as defined above, who leaves his employment with the county sheriff's department to retire under the provisions of the public employee retirement system of Idaho or the county's retirement system, whether under disability retirement or otherwise. [I.C., § 31-830, as added by 1991, ch. 19, § 1, p. 41.]



## STATUTORY NOTES

**Prior Laws.** — Former § 31-830, which comprised I.C.A., § 30-708B, as added by 1939, ch. 126, § 1, p. 225, was repealed by S.L. 1989, ch. 73, § 18.

**31-831 — 31-833. Land acquired through issuance of county treasurer's deed — Foreclosure of lien — Procedure — Redemption. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — These sections, §§ 30-709 to 30-711, were repealed by S.L. which comprised C.S., §§ 3423A — 3423C, as 1989, ch. 74, § 6. added by 1927, ch. 196, § 1, p. 263; I.C.A.,

**31-834, 31-835. Land acquired through issuance of county treasurer's deed — Sale — Price — Order — Protest — Hearing. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — Section 31-834 which comprised I.C., § 31-834, C.S., § 3423D, as added by 1929, ch. 144, § 1, p. 264; I.C.A., § 30-712; am. 1995, ch. 61, § 4, p. 134 was repealed by S.L. 1999, ch. 215, § 2, p. 573, effective July 1, 1999. Section 31-835 which comprised I.C., § 31-835, C.S., § 324E, as added by 1929, ch. 144, § 2, p. 264; I.C.A., § 30-713; am. 1989, ch. 73, § 19, p. 117, was repealed by S.L. 1999, ch. 215, § 2, p. 573, effective July 1, 1999.

**31-836. Lease of county property.** — Except as otherwise provided by law, the board of county commissioners may lease any property belonging to the county:

(1) Without public auction for a term not exceeding five (5) years at such rental as may be determined upon by the unanimous vote of such board, or at public auction to the highest bidder for a term not exceeding thirty (30) years. Rents shall be paid annually in advance provided, however, that the provision requiring the payment of rent in advance shall not apply to a lease to the federal or state government, a municipal corporation of this state, or any governmental agency or department.

(2) Any hospital or hospital grounds or portions thereof to be used in conjunction with hospital operations or hospital equipment belonging to the county may be leased by the board without public auction for a term not exceeding twenty (20) years; or any property suitable for a shelter intended to house victims of sexual or domestic violence which property belonging to the county may be leased by the board without public auction to any nonprofit corporation or association organized for the purpose of erecting and maintaining a shelter to house victims of sexual or domestic violence for a term not exceeding twenty (20) years; and, provided further, that the county, either as lessor or lessee, may enter into any lease or other transaction concerning any property with the Idaho health facilities authority for any term not to exceed ninety-nine (99) years.

(3) Any property belonging to the county may be leased by the board without public auction for a term not to exceed thirty (30) years, to be used

for an industrial park in conjunction with economic development purposes. An industrial park for purposes of this section means facilities for manufacturing, processing, production, assembly warehousing or activities associated therewith.

(4) Without public auction the board of county commissioners may lease any property belonging to the county and not necessary for its use to the state of Idaho or any political subdivision thereof for any public purpose, to any nonprofit corporation or association organized for the purpose of erecting and maintaining thereon any play field, recreation park or stadium to serve as a memorial to the living or deceased soldiers, sailors and marines of an armed conflict entered into by the United States, or to any hospital district organized under chapter 13, title 39, Idaho Code, for use in furthering the purposes of said district or to any nonprofit corporation or association organized for the purpose of erecting and maintaining an animal shelter. Such lease may be for any term not to exceed ninety-nine (99) years, may provide for only a nominal rental to the county and shall, by its provisions, terminate when the property so leased ceases to be used for any public purpose, as an animal shelter, as a play field, recreation park or stadium serving as a memorial, or by the hospital district for its purposes. Nothing in this subsection shall prohibit the naming or title sponsorship of any play field, recreation park or stadium erected and maintained as a memorial as provided in this subsection as long as the play field, recreation park or stadium continues to serve as such memorial. [C.S., § 3423a, as added by 1927, ch. 159, § 2, p. 212; I.C.A., § 30-714; am. 1933, ch. 200, § 1, p. 393; am. 1937, ch. 123, § 1, p. 184; am. 1939, ch. 26, § 1, p. 56; am. 1947, ch. 190, § 1, p. 459; am. 1959, ch. 49, § 1, p. 104; am. 1961, ch. 103, § 1, p. 152; am. 1967, ch. 24, § 1, p. 41; am. 1977, ch. 60, § 2, p. 115; am. 1988, ch. 310, § 1, p. 966; am. 1989, ch. 115, § 1, p. 259; am. 1994, ch. 158, § 1, p. 358; am. 1995, ch. 156, § 1, p. 633; am. 2000, ch. 128, § 1, p. 303.]

### STATUTORY NOTES

**Cross References.** — Conveyance or transfer of real or personal property to another governmental unit, §§ 67-2322 — 67-2325.

**Effective Dates.** — Section 3 of S.L. 1977, ch. 60 declared an emergency. Approved March 15, 1977.

Section 2 of S.L. 1989, ch. 115 declared an emergency. Approved March 27, 1989.

Section 2 of S.L. 2000, ch. 128 provided that the act shall be in full force and effect on and after July 1, 2000.

### JUDICIAL DECISIONS

#### **Lease to Nonpublic Entity.**

The authority of the board of county commissioners to lease fairground property was not limited to leasing it solely to the state or department of agriculture, but they could also

properly lease the property to a horse racing corporation during the period the property was not used by the public. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

## RESEARCH REFERENCES

**A.L.R.** — Applicability of zoning regulation to nongovernmental lessee of government-owned property, 84 A.L.R.3d 1187.

**31-837, 31-838. Horticultural and bee inspections. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — These sections, §§ 3444, 3445; I.C.A., §§ 30-735, 30-736, which comprised R.C., §§ 1326h, 1340c, as added by 1913, chs. 18, 180, §§ 12, 14; pp. 88, 578; reen. C.L., §§ 1313b, 1330c; C.S.,

§§ 3444, 3445; I.C.A., §§ 30-735, 30-736, were repealed by S.L. 1989, ch. 73, § 20. For present law see § 22-2517 et seq.

**31-839. Cooperation with agricultural extension work.** — The board of county commissioners of the several counties within the state of Idaho are hereby authorized and empowered to provide funds for demonstration work in agriculture and home economics within said counties and for the employment of extension agents in agriculture and home economics in cooperation with the University of Idaho and the United States department of agriculture. [1919, ch. 41, § 1, p. 139; C.S., § 3446; I.C.A., § 30-737.]

## STATUTORY NOTES

**Cross References.** — Agricultural extension work, § 33-2901 et seq.  
Power of commissioners to appropriate

funds for county agents under Smith-Lever Act, § 31-826.

**31-840. Extension agents — Salaries and expenses.** — The salary and expenses of such extension agents shall be fixed by the director of the University of Idaho extension division acting in cooperation with the board of county commissioners. The commissioners of said counties are hereby authorized and empowered to make provision for the payment of such salary and expenses out of the general tax fund of the county, or out of the county fair fund, or out of other available funds not otherwise appropriated. [1919, ch. 41, § 2, p. 139; C.S., § 3447; am. 1929, ch. 80, § 1, p. 131; I.C.A., § 30-738.]

## STATUTORY NOTES

**Cross References.** — Fund for county fair purposes, §§ 22-206, 22-207.

**31-841, 31-842. Grand nurses — Graduate nurses. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — These sections, C.S., §§ 3448, 3449; I.C.A., §§ 30-739, 30-740, which comprised 1919, ch. 142, § 1, p. 437; were repealed by S.L. 1989, ch. 73, § 20.



**31-843. [Amended and Redesignated.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 3450; I.C.A., § 30-741, is now compiled as comprised 1885, p. 106, § 12; R.S., § 1763; § 31-804(2). am. R.C., § 1918; reen. C.L., § 1918n; C.S.,

**31-844. Subpoenas for witnesses.** — The board may issue subpoenas to compel the attendance of any person and the production of any books, papers or other items relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction. [R.S., § 1768; reen. R.C. & C.L., § 1919; C.S., § 3451; I.C.A., § 30-742; am. 1989, ch. 73, § 21, p. 117.]

**31-845. Enforcement of attendance and testimony.** — A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of justice. Obedience to the subpoena, or to an order to attend, or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of, the Code of Civil Procedure. [R.S., § 1769; reen. R.C. & C.L., § 1920; C.S., § 3452; I.C.A., § 30-743.]

**STATUTORY NOTES**

**Cross References.** — Rights and duties of witnesses, §§ 9-1301 — 9-1306.

**Compiler's Notes.** — The Code of Civil Procedure, referred to in this section, is no longer retained as a separate code. It comprises substantially the material contained in present titles 1 to 13 of the Idaho Code. See also the Idaho Rules of Civil Procedure.

**31-846. Witness fees need not be prepaid.** — Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board may allow them reasonable compensation for services and attendance. [R.S., § 1770; reen. R.C. & C.L., § 1921; C.S., § 3453; I.C.A., § 30-744.]

**31-847. Leave of absence to officers.** — The board of commissioners may grant to any county officer of their respective counties leave of absence from their county and the state, for a period not exceeding ninety (90) days, during which time the absence of such officer does not work forfeiture of his office; provided, that before the granting of such leave of absence, the officer (except county commissioners) must appoint a deputy to perform the duties of his office, as by statute in such cases made and provided, and must present to, and file with, the board of commissioners of his county the written consent of each person liable on his official bond, that such leave of absence be granted; be it further provided, that no leave of absence shall be granted to more than any one (1) county commissioner at the same time; providing, however, that where any elective or appointive county officer is required to absent himself by reason of being a member of the armed forces

of the nation or by reason of official call to service in civilian war work, such period of absence shall not exceed the date of the next succeeding general election, such absence shall not work forfeiture of the office of such officer, and such absence shall suspend the salary of such officer during such period, except that the board may adopt a policy by which such officer may, for periods of absence not to exceed four (4) weeks per year, receive his or her regular salary reduced by an amount equal to any monetary compensation received for the performance of such military or civilian war work. For purposes of this section, appointive county officers do not include deputies appointed pursuant to section 31-2003, Idaho Code. [1873, p. 27, § 1; R.S., § 1785; am. 1888-1889, p. 63; reen. R.C. & C.L., § 1922; C.S., § 3454; I.C.A., § 30-745; am. 1935, ch. 9, § 1, p. 23; am. 1943, ch. 66, § 1, p. 136; am. 1949, ch. 61, § 1, p. 104; am. 1970, ch. 120, § 2, p. 284; am. 1989, ch. 73, § 22, p. 117; am. 1995, ch. 114, § 1, p. 384.]

#### STATUTORY NOTES

**Cross References.** — Absence of county officers from state restricted, § 31-2013.

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

**Effective Dates.** — Section 2 of S.L. 1995,

ch. 114 provided that the act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1995.

#### JUDICIAL DECISIONS

##### County Judge as Officer.

The probate judge is a county officer and he must reside and keep his office in the county, establishing rules and hours necessary for the dispatch of business. He is therefore authorized to absent himself from the state for

twenty days without the consent of anyone. But the board of county commissioners has no authority to grant him a leave of absence and an order granting such leave was void. *State v. McDermott*, 52 Idaho 602, 17 P.2d 343 (1932).

### 31-848 — 31-854. Fireguard — Alterations and repairs — Camp fire notice — Wires crossing railroad tracks — Orders to change wires — Disobedience. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — The following sections were repealed by S.L. 1989, ch. 73, § 23, effective July 1, 1989:

31-848. (1879, p. 12, § 1; am. R.S., § 1788; reen. R.C. & C.L., § 1923; C.S., § 3455; I.C.A., § 30-746).

31-849. (1879, p. 12, § 2; am. R.S., § 1789; reen. R.C. & C.L., § 1924; C.S., § 3456; I.C.A., § 30-747).

31-850. (1879, p. 12, § 3; am. R.S., § 1790;

reen. R.C. & C.L., § 1925; C.S., § 3457; I.C.A., § 30-748).

31-851. (R.S., § 1792; am. R.C. & C.L., § 1926; C.S., § 3458; I.C.A., § 30-749).

31-852. (1907, p. 535, § 1; reen. R.C. & C.L., § 1927; C.S., § 3459; I.C.A., § 30-750).

31-853. (1907, p. 535, § 2; am. R.C. & C.L., § 1928; C.S., § 3460; I.C.A., § 30-751).

31-854. (1907, p. 535, § 3; am. R.C. & C.L., § 1929; C.S., § 3461; I.C.A., § 30-752).

**31-855. Neglect of duty by commissioners.** — Any commissioner who neglects or refuses, without just cause therefor, to perform any duty imposed on him, or who wilfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or wilfully, fraudulently or corruptly attempts to perform an act, as

commissioner, unauthorized by law, shall be prosecuted as provided in section 18-316, Idaho Code. [R.S., § 1791; am. and reen. R.C. & C.L., § 1930; C.S., § 3462; I.C.A., § 30-753; am. 1989, ch. 73, § 24, p. 117.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 18-316, re- 1972, ch. 336, § 1 and repealed by S.L. 1994, referred to in this section, was enacted by S.L. ch. 131, § 7.

**31-856. Migratory labor housing — Cooperation with federal government.** — The county commissioners may cooperate in any plan providing for the furnishing of housing, lands, labor and material and other assistance in the program sponsored by the United States of America pertaining to migratory labor by making agreements with the United States of America through the United States Department of Agriculture, its cooperating agencies, or any other agency of the United States of America, with reference to providing facilities, labor, materials or funds to carry forward said program. [I.C.A. 30-754 as added by 1947, ch. 144, § 1, p. 348.]

**31-857. School, road, herd and other districts — Presumption of validity of creation or dissolution.** — Whenever any school district, road district, herd district, or other district has heretofore been, or shall hereafter be, declared to be created, established, disestablished, dissolved, or modified, by an order of the board of county commissioners in any county of the state of Idaho, a legal prima facie presumption is hereby declared to exist, after a lapse of two (2) years from the date of such order, that all proceedings and jurisdictional steps preceding the making of such order have been properly and regularly taken so as to warrant said board in making said order, and the burden of proof shall rest upon the party who shall deny, dispute, or question the validity of said order to show that any of such preceding proceedings or jurisdictional steps were not properly or regularly taken; and such prima facie presumption shall be a rule of evidence in all courts in the state of Idaho. [1935, ch. 79, § 1, p. 133; am. 1989, ch. 73, § 25, p. 117.]

**31-858 — 31-861. Military or naval reservations restricted areas — Violations of restricted areas — Excepted cities, towns and villages from restrictions. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised 1943, ch. 138, §§ 1 — 4, p. 276, were repealed by S.L. 1989, ch. 73, § 26.

**31-862. Authorizing special tax to be used solely and exclusively for preventive health services.** — The board of county commissioners is hereby authorized to levy a special tax not to exceed four hundredths per cent (.04%) of market value for assessment purposes of all taxable property in the county, above the statutory limitation, to be expended solely and



exclusively for preventive health services by county or district boards of health. [I.C.A., § 30-755 as added by 1949, ch. 208, § 1, p. 443; am. 1967, ch. 219, § 1, p. 665; am. 1970, ch. 49, § 1, p. 102; am. 1989, ch. 73, § 27, p. 117.]

### JUDICIAL DECISIONS

**Cited in:** District Bd. of Health v. Chancey,  
94 Idaho 944, 500 P.2d 845 (1972).

**31-863. Levy for charities fund.** — For the purpose of nonmedical indigent assistance pursuant to chapter 34, title 31, Idaho Code, and for the purpose of providing financial assistance on behalf of the medically indigent, pursuant to chapter 35, title 31, Idaho Code, said boards are authorized to levy an ad valorem tax not to exceed ten hundredths of one percent (.10%) of the market value for assessment purposes of all taxable property in the county. [I.C., § 31-863, as added by 1996, ch. 410, § 26, p. 1357.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-863, which comprised 1951, ch. 151, § 1, p. 343, was repealed by S.L. 1994, ch. 77, § 1, effective March 9, 1994.

**Effective Dates.** — Section 27 of S.L.

1996, ch. 410 declared an emergency, which emergency is hereby declared to exist, Section 6 [§ 31-3503B] of this act shall be in full force and effect on and after its passage and approval. Approved March 20, 1996.

**31-864. Historical societies and museums — Support by county.** — (1) The board of county commissioners of any county may expend annually such amounts as necessary for the support of county or local historical societies which are incorporated as Idaho nonprofit corporations and which operate primarily within the county, or for the support of museums or of historical restoration projects within the county undertaken or operated by Idaho nonprofit organizations, or for the marking and development of historic sites by Idaho nonprofit corporations. For the purposes of this section, the board of county commissioners of any county is authorized and empowered to levy not more than twelve one-thousandths percent (.012%) on each dollar of market value for assessment purposes of taxable property within the county.

(2) Before money is granted under this section, the directors of such nonprofit corporations shall present to the county commissioners a proposed budget which shall indicate anticipated revenues and expenditures of the nonprofit corporation (including the sums requested from the county), and shall indicate the purposes of the proposed expenditures. The board of county commissioners may require an audit of the accounts and financial records of any such nonprofit corporations receiving county funds. [1961, ch. 76, § 2, p. 103; am. 1969, ch. 240, § 1, p. 757; am. 1973, ch. 94, § 1, p. 162; am. 1978, ch. 184, § 1, p. 416; am. 1988, ch. 200, § 1, p. 378; am. 1989, ch. 74, § 7, p. 128.]

## STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1961, ch. 76 read, "Section 1. Declaration of purpose. — The purpose of this act is to enable counties to support worthy and desirable county and local projects for the preservation of Idaho's historical heritage and for the improvement of cultural and educational facilities by supporting museums, historical societies, historical restorations, and similar

projects, and by supporting and improving the operation of such organizations and projects."

The words in parentheses so appeared in the law as enacted.

**Effective Dates.** — Section 2 of S.L. 1973, ch. 94 provided that the act should take effect on and after July 1, 1973.

**31-865. Budgeting and auditing of funds. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1961, ch. 76, § 3, p. 103, was repealed by S.L. 1989, ch. 74, § 8.

**31-866. Contracts for public benefit — Designated grantee.** — (1) The boards of county commissioners in their respective counties shall have the authority and power to enter into contracts with private nonprofit corporations to promote, maintain, and administer projects and programs that the board of county commissioners considers to be of public benefit, and the purpose of which is to carry on programs concerning the aged.

(2) The board of county commissioners may become the designated grantee and receive funding to sponsor, promote and administer such public activities as they may deem beneficial. [I.C., § 31-866, as added by 1973, ch. 166, § 1, p. 318.]

**31-867. Special levy for courts — District court fund.** — (1) The board of county commissioners of each county in this state may levy annually upon all taxable property of its county, a special tax not to exceed four hundredths per cent (.04%) of market value for assessment purposes for the purpose of providing for the functions of the district court and the magistrate division of the district court within the county. All revenues collected from such special tax shall be paid into the "district court fund," which is hereby created, and the board may appropriate otherwise unappropriated moneys into the district court fund. Moneys in the district court fund may be expended for all court expenditures other than courthouse construction and remodeling.

(2) Balances in the district court fund may be accumulated from year to year sufficient to operate the court functions on a cash basis, but such balances shall not exceed sixty per cent (60%) of the total budget for court functions for the current year.

(3) There is hereby created the county court facilities fund which may be established in each county by resolution adopted at a public meeting of the board of county commissioners. Moneys in the county court facilities fund shall be expended for planning, remodeling and construction of court facilities. The county court facilities fund shall be separate and distinct from the county current expense fund and county expenditures from the county

court facilities fund shall be solely dedicated to the purposes set forth in this section. At the discretion of the board of county commissioners, funds deposited in the county court facilities fund may be accumulated from year to year or expended on a regular basis. [I.C., § 31-867, as added by 1976, ch. 307, § 2, p. 1052; am. 1989, ch. 73, § 28, p. 117; am. 1994, ch. 208, § 1, p. 656; am. 1997, ch. 52, § 1, p. 90.]

#### STATUTORY NOTES

**Effective Dates.** — Section 4 of S.L. 1976, ch. 307 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retro-

active to January 1, 1976. Approved April 1, 1976. Became law without governor's signature March 31, 1976.

**31-868. Contracts for fire protection.** — The boards of county commissioners in their respective counties shall have the authority and power to enter into contracts with a city or a fire protection district for the provision of fire or life protection services, or both of them, in areas of the county not otherwise receiving fire or life protection. [I.C., § 31-868, as added by 1979, ch. 140, § 1, p. 436; am. 1985, ch. 178, § 1, p. 459.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1979, ch. 140 declared an emergency. Approved March 27, 1979.

**31-869. Development of energy systems.** — The boards of county commissioners of their respective counties are empowered to establish, create, develop, own, maintain and operate or contract for the ownership, operation and maintenance of energy facilities as follows:

(1) Geothermal energy systems for heating for the benefit of the county and the residents of the county.

(2) Electrical generation plants not to exceed twenty-five (25) megawatts in capacity which use as a fuel source landfill gas, wood waste or other biomass fuels. All the electricity produced from the electrical generation facility shall be sold by the county at wholesale. [I.C., § 31-868 as added by 1979, ch. 312, § 1, p. 844; am. and redesisg. 2005, ch. 25, § 39, p. 82; am. 2006, ch. 210, § 1, p. 639.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 210, in the introductory paragraph, inserted "own" and "or contract for the ownership, operation and maintenance of energy facilities as follows"; and added the subsection (1) designation and subsection (2).

**Compiler's Notes.** — Chapters 140 and

312 of the 1979 session laws were both assigned as § 31-868. Accordingly, the compiler compiled chapter 140 as § 31-868 and assigned this section as § 31-869. This chapter assignment was made permanent by S.L. 2005, ch. 25.

**31-870. Fees for county services.** — (1) Notwithstanding any other provision of law, a board of county commissioners may impose and collect



fees for those services provided by the county which would otherwise be funded by ad valorem tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered. Taxing districts other than counties may impose fees for services as provided in section 63-1311, Idaho Code.

(2) The board of county commissioners may establish and provide for the collection of a solid waste fee in accordance with a request made pursuant to this section, and such fee shall be certified and collected in the same manner provided by law for the collection of real or personal property taxes.

(3) The administrative fee authorized under the provisions of this section and collected for issuance of motor vehicle registrations pursuant to chapter 4, title 49, Idaho Code, shall be the same for any registration issued pursuant to section 49-402B, Idaho Code, and may not be doubled or in any way increased solely because of registration under that section. [I.C., § 31-870, as added by 1999, ch. 90, § 1, p. 291.]

#### STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1980, ch. 290 declared an emergency. Approved April 1, 1980.

Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

**31-871. Classification and retention of records.** — (1) County records shall be classified as follows:

(a) "Permanent records" shall consist of, but not be limited to, the following: proceedings of the governing body, ordinances, resolutions, building plans and specifications for commercial projects and government buildings, bond register, warrant register, budget records, general ledger, cash books and records affecting the title to real property or liens thereon, and other documents or records as may be deemed of permanent nature by the board of county commissioners.

(b) "Semipermanent records" shall consist of, but not be limited to, the following: claims, contracts, canceled checks, warrants, duplicate warrants, license applications, building applications for commercial projects and government buildings, departmental reports, purchase orders, vouchers, duplicate receipts, bonds and coupons, registration and other election records excluding election ballots and tally books, financial records, and other documents or records as may be deemed of semipermanent nature by the board of county commissioners.

(c) "Temporary records" shall consist of, but not be limited to, the following: correspondence not related to subsections (1) and (2) of this section, building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval, cash receipts subject to audit, election ballots and tally books, and other records as may be deemed temporary by the board of county commissioners.

(d) Those records not included in subsection (1)(a), (b) or (c) of this section shall be classified as permanent, semipermanent or temporary by the

board of county commissioners and upon the advice of the office of the prosecuting attorney.

(2) County records shall be retained as follows:

(a) Permanent records shall be retained for not less than ten (10) years.

(b) Semipermanent records shall be kept for not less than five (5) years after date of issuance or completion of the matter contained within the record.

(c) Temporary records shall be retained for not less than two (2) years.

(d) Records may only be destroyed by resolution of the board of county commissioners after regular audit and upon the advice of the prosecuting attorney. A resolution ordering destruction must list, in detail, records to be destroyed. Such disposition shall be under the direction and supervision of the board's clerk.

(e) The provisions of this section shall control the classification and retention schedules of all county records unless otherwise provided in Idaho Code or any applicable federal law. [I.C., § 31-871, as added by 1993, ch. 140, § 2, p. 371; am. 2000, ch. 54, § 1, p. 108; am. 2001, ch. 99, § 3, p. 248.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-871, which comprised I.C., § 31-871, as added by 1981, ch. 79, § 1, p. 112, was repealed by S.L. 1993, ch. 140, § 1, effective July 1, 1993.

**31-872. Regulation of firearms — Control by state.** — No board of county commissioners of any county may in any manner regulate the lawful ownership, possession or transportation of firearms when carried or transported for purposes not prohibited by the laws of the state of Idaho. [I.C., § 31-872, as added by 1984, ch. 243, § 1, p. 590.]

**31-873. Reimbursement for certain medical assistance payments.** — (1) For the purpose of assisting counties with their medical indigency claims, state participation in the federal medical assistance (medicaid) program under title XIX of the social security act, as amended, shall be expanded to match federal funds for coverage of services as defined by section 56-209d, Idaho Code.

(2) Boards of county commissioners shall safeguard all provided information as provided for in section 1902(a)(7) of the social security act, 42 CFR 431.300 through 431.307 and sections 56-221 and 56-222, Idaho Code. [I.C., § 31-873, as added by 1987, ch. 170, § 1, p. 334; am. 1991, ch. 233, § 2, p. 553.]

#### STATUTORY NOTES

**Federal References.** — Title XIX of the Social Security Act, referred to in subsection (1), is compiled as 42 U.S.C., §§ 1396—1396p.

Section 1902(a)(7) of the social security act, referred to in subsection (2), is compiled as 42 U.S.C. § 1396a(a)(7).

**Compiler's Notes.** — Section 1 of S.L.

1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19(1) of said ch. 233 declared an emergency and provided such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's

signature on April 13, 1991. Therefore, the repeal never took effect.

**Effective Dates.** — Section 19 of S.L. 1991, ch. 233 as amended by § 1 of S.L. 1992, ch. 309 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

"(2) Sections 2 through 17 of this act shall be in full force and effect on and after October 1, 1991.

"(3) Section 18 of this act shall be in full force and effect on or after October 1, 1993.

"(4) On October 1, 1991, all moneys contributed by counties to the catastrophic health care cost account as of the close of business on September 30, 1991, shall be separately identified and set aside, and shall be used by the administrator to fund medical

costs of participating counties which occurred prior to October 1, 1991, until all claims are paid or until such moneys are exhausted. Any fund balance remaining after the proper payment of claims incurred prior to October 1, 1991, until all claims are paid or until such moneys are exhausted. Any fund balance remaining after the proper payment of claims incurred prior to October 1, 1991, shall be apportioned back to the county of origin. If no fund balance exists, but outstanding claims exist that were incurred prior to October 1, 1991, such claims shall be paid as provided in subsection (5) of this section.

"(5) All claims incurred on or after October 1, 1991, shall be paid from the catastrophic health care cost account funded from state appropriations to the account." Became law without the governor's signature April 4, 1991.

**31-874. Proceedings and records of medical indigents.** — All proceedings and records related to medical indigency pursuant to the provisions of section 31-873, Idaho Code, and chapters 34 and 35, title 31, Idaho Code, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and shall not be subject to the provisions of sections 67-2340 through 67-2347, Idaho Code. [I.C., § 31-874, as added by 1988, ch. 332, § 1, p. 994; am. 1990, ch. 213, § 27, p. 480.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19(1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal never took effect.

**Effective Dates.** — Section 10 of S.L. 1988, ch. 332 declared an emergency. Approved April 6, 1988.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**31-875. Computerized mapping system fees.** — (1) As used in this section, "computerized mapping system" or "system" means the digital storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography, water, streets and geographic features.

(2) In a county which develops a computerized mapping system, the board of county commissioners may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to paper maps produced from the computerized mapping system. [I.C., § 31-875, as added by 1993, ch. 201, § 1, p. 555.]



**31-876. Public transportation services.** — (1) The boards of county commissioners in their respective counties shall have the authority to establish, fund and operate public transportation services that the board of county commissioners considers to be of public benefit.

(2) Public transportation services include, without limitation, fixed transit routes; scheduled or unscheduled transit service; paratransit services for the elderly, disabled or other persons dependent on public transportation; shuttle and commuter services between cities, counties, health care facilities, employment centers, educational institutions and park-and-ride locations; subscription van and car-pooling services; and transportation services unique to social service programs.

(3) The board of county commissioners may become the designated grantee and receive funding from other federal, state, local and private sources and use said funds for the sponsorship, promotion and administration of such public transportation services as they may deem beneficial. [I.C., § 31-876, as added by 1994, ch. 121, § 1, p. 271.]

**31-877. Water and sewer services.** — The boards of county commissioners in their respective counties shall have the authority to provide necessary water and sewer services to any part of the county which does not receive water and sewer services, or any part of the county where a water and sewer or a water or sewer district has been dissolved pursuant to chapter 41, title 63, Idaho Code. For purposes of this section, a board of county commissioners shall have the authority granted to water and sewer districts pursuant to chapter 32, title 42, Idaho Code, and the authority granted to municipalities pursuant to the provisions of title 50, Idaho Code. [I.C., § 31-877, as added by 2001, ch. 184, § 1, p. 642.]

STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 2001, ch. 184 declared an emergency. Approved March 26, 2001.

CHAPTER 9

RECLAMATION, DRAINAGE AND DROUGHT RELIEF — COOPERATION WITH  
FEDERAL AGENCIES

SECTION.	SECTION.
31-901. Cancellation or adjustment of taxes.	31-904. Hearing and decree on petition for confirmation — Appeal to Supreme Court.
31-902. Petition for cancellation or adjustment.	
31-903. Petition for confirmation of cancellation or adjustment.	31-905. Recording and filing of decree.
	31-906. Liens for state taxes not released.

**31-901. Cancellation or adjustment of taxes.** — Whenever, in matters relating to reclamation, drainage and drought relief, the board of county commissioners shall deem it necessary or desirable to cooperate with any department or agency of the government of the United States authorized to make loans to irrigation or drainage districts, or loans on real property or farm crops, or with any agency or corporation created or organized under

any act of congress and authorized to make such loans, including the Reconstruction Finance Corporation, the Home Owners' Loan Corporation, the Federal Housing Administration and the Farm Credit Administration, and any agency or corporation operating under the supervision of said Farm Credit Administration or Federal Housing Administration, in order to make available to the people of any district or community within the county the benefits that may accrue from the loaning of money to or in such district or community by any such agency or agencies, and if, in the judgment of the board, the public interest and common welfare require that any ad valorem tax be canceled or otherwise adjusted in order to effect such cooperation and make available the benefits herein referred to, and if it be found that the cancelation or adjustment of such taxes will not be detrimental to the interest of the county or the tax-levying bodies affected thereby, the board of county commissioners, if the tax be a lien upon real property in such county, shall have power and authority to cancel or otherwise adjust such tax upon the conditions and in the manner and for the purpose herein set forth, if it finds and determines that one (1) or more of the following conditions exist:

(a) The lands upon which the tax is a lien are situated in an irrigation project having a water right so inadequate, uncertain and undependable that the landowners have found it necessary to reorganize and readjust the project by eliminating a substantial acreage therefrom and transferring the water rights appurtenant to the lands eliminated to the remaining lands in order to assure the production of normal crops on the lands retained in the project, and that it is believed that the lands retained in the project, upon the consummation of the readjustment, will be able to pay the taxes thereafter levied against such lands, and that the cancelation or adjustment of the taxes theretofore levied is deemed necessary to accomplish a readjustment of the project and make available to the farmers and landowners thereon the benefits that may be had from any such lending agency or agencies; or

(b) The lands on which such taxes are a lien are located within an irrigation or drainage district or are served by an incorporated water company which is refinancing its outstanding indebtedness, the payment of which is a charge against such lands, on a substantially reduced basis, and that the cancelation or adjustment of such tax is necessary in order to enable such district or company to obtain such reduction and refinancing of its indebtedness, and that by such action the lands will be enhanced in value and become better able to pay the taxes thereafter levied and assessed against such lands and will thereby by [be] qualified to receive the benefits that may be had from any such lending agency or agencies; or

(c) The irrigation or drainage works serving such lands, or dikes protecting the same against overflow, have been damaged or destroyed by flood or other unforeseen casualty, or are in such condition that it is impossible to finance the necessary repair or reconstruction of such works through or with the aid of any such lending agency or agencies, without an adjustment of the unpaid taxes on the lands affected thereby. [1935 (1st E.S.), ch. 52, § 1, p. 137.]

## STATUTORY NOTES

**Compiler's Notes.** — The bracketed word "be" in subdivision (b) was inserted by the compiler.

**31-902. Petition for cancelation or adjustment.** — Any one or more owners of land seeking such cancelation or adjustment of taxes, or any irrigation or drainage district or incorporated water company having such lands within its project, may file with the clerk of the board of county commissioners a petition setting forth the facts upon which it is claimed a cancelation or adjustment of the taxes should be made. If the petition sets forth the facts required to be contained therein under section 31-901, the board shall hear the proof submitted in support of said petition and anyone present shall have a right to be heard in opposition thereto. If the board, after considering the evidence offered at such hearing, and at any adjournment thereof, and after making such other investigation as it may deem necessary, finds that the public interest and common welfare require that such taxes be canceled or otherwise adjusted and that such action will not be detrimental to the interests of the county and other tax-levying bodies affected thereby, and that the conditions set forth in subdivisions (a), (b) or (c) of section 31-901 exist, the board shall make and enter an order which shall be recorded in full in the official minutes of the board, setting forth its findings and decision, and its reasons therefor. [1935 (1st E.S.), ch. 52, § 2, p. 137.]

**31-903. Petition for confirmation of cancelation or adjustment.** — If the board finds, decides and orders that the taxes be canceled or otherwise adjusted, the petitioner, or petitioners, shall, within twenty (20) days thereafter, file with the clerk of the district court of said county a petition praying in effect that the proceedings of the board may be examined, approved and confirmed by the court. The court, or the judge thereof at chambers shall thereupon make an order designating a time for hearing said petition and direct the clerk of the court to publish a notice, at the expense of the petitioner or petitioners, of the filing of said petition. The notice shall state the time and place fixed by the court for hearing the petition and the prayer thereof, and a brief statement of the action taken by the board of county commissioners thereon, and that any person interested in the subject-matter of said petition may, on or before the day fixed for the hearing thereof, demur to or answer said petition. The notice shall be published in a newspaper of general circulation in the county at least once a week for at least two (2) consecutive weeks, and the time fixed for the hearing shall be not less than twenty (20) days from the first publication of such notice. The rules of pleading and practice in civil actions in the district court shall apply to proceedings hereunder insofar as the same are not inconsistent with the provisions of this act. [1935 (1st E.S.), ch. 52, § 3, p. 137.]



## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1935 (1st E.S.), ch. 52, §§ 1-7, compiled as §§ 31-901 — 31-906.

**31-904. Hearing and decree on petition for confirmation — Appeal to Supreme Court.** — Upon the hearing of said petition, the court shall examine the petition filed with the clerk of the board of county commissioners and the proceedings had thereunder, and if any contest be made upon the facts as found by the board, the court may hear evidence thereon for the purpose of determining whether there is an [any] substantial evidence to support the findings and decision of the board. If the court finds that the proceedings of the board were taken and had substantially in accordance with the provisions of this act, and that the board had jurisdiction and authority to make the order, it shall, by its decree, approve and confirm the proceedings of the board; otherwise, it shall vacate and set aside the findings and order as made by the board, or modify or amend the same to conform to the facts as found and determined by the court. Any party aggrieved by the decree or order of the court may appeal therefrom, within thirty (30) days after the entry of such decree or order, to the Supreme Court of the state of Idaho. The provisions of the statutes governing appeals in civil actions shall apply to appeals under this act. [1935 (1st E.S.), ch. 52, § 4, p. 137.]

## STATUTORY NOTES

**Cross References.** — Appeals in civil actions, § 13-201 et seq.

For words "this act," see Compiler's notes, § 31-903.

**Compiler's Notes.** — The bracketed word "any" in the first sentence was inserted by the compiler.

**31-905. Recording and filing of decree.** — When an order is made and entered by the court approving, modifying, or disapproving the order of the board of county commissioners canceling or adjusting any taxes heretofore or hereafter levied, a copy of the order or decree of the court certified by the clerk shall be recorded in the minutes of the board, and if the court approves or modifies the order of the board, certified copies of such decree and order of the court shall also be delivered to the county tax collector and the auditor for their information and guidance, and proper entries shall be made on the tax rolls and other records to show the cancelation or adjustment as finally approved by the court. [1935 (1st E.S.), ch. 52, § 5, p. 137.]

**31-906. Liens for state taxes not released.** — This act shall not be construed as authorizing the board of county commissioners or the district court to release or discharge any lands from the lien of taxes levied thereon for state purposes unless the amount due the state has been paid by the county. [1935 (1st E.S.), ch. 52, § 6, p. 137.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-903.

## CHAPTER 10

## ERECTION OF PUBLIC BUILDINGS

## SECTION.

- 31-1001. Erection of buildings — Furnishing of offices — Contracts — Lease of premises for courthouse or jail — Books and stationery.
- 31-1002. Bond election.
- 31-1003. Purchase of site — Letting of contract.
- 31-1004. Statutes governing election and bond issue.
- 31-1005. Joint city and county sites and buildings.

## SECTION.

- 31-1006. Joint sites and buildings — Contracts.
- 31-1007. Joint sites and buildings — Indebtedness.
- 31-1008. County building construction fund — Levy of tax — Special election.
- 31-1009. Investment of fund — Accrual of interest.
- 31-1010. Extension of application.

**31-1001. Erection of buildings — Furnishing of offices — Contracts — Lease of premises for courthouse or jail — Books and stationery.** — The board must cause to be erected or furnished, a courthouse, jail and such other public buildings as may be necessary, and must, when necessary, provide offices with necessary furniture for the sheriff, clerk of the district court and ex officio auditor and recorder, county treasurer, prosecuting attorney, county assessor and county surveyor, and must draw warrants in payment of the same: provided, that the contract for the erection of any such buildings must be let, after thirty (30) days' notice for proposals, to the lowest bidder who will give security for the completion of any contract he may make respecting the same; and, provided further, no contracts for the purchase of furniture must be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars (\$1,000). And, provided further, that no part of the provisions of this section shall be construed to prevent the board of county commissioners, from entering into a lease for courthouse premises, rooms and jail for any period in their discretion, not to exceed thirty (30) years, and provided that the county commissioners may contract with responsible parties for the leasing of a courthouse, jail and hospital, or a combination of courthouse, jail and hospital, or fairground buildings and facilities, to be constructed upon premises owned by the county or otherwise, provided that said contract shall be let subject to the provisions of chapter 28, title 67, Idaho Code; the contract also may provide that at the expiration of the term of the lease, upon full performance of such lease by the county, the said courthouse premises, rooms and jail, fairground buildings and facilities, or so much thereof as is leased, may become the property of the county. The board must also provide all necessary books of record for the county auditor and recorder, county treasurer, county assessor, and tax collector, clerk of the district court, county surveyor, and the books and stationery for the use of the board, and so much as is necessary for the use of said county officers in the transaction of official business. Nothing herein shall be construed as

limiting or otherwise affecting a lease or other transaction between the Idaho health facilities authority and the board of county commissioners as provided in section 31-836, Idaho Code. [1875, p. 520, § 13; R.S., § 1761; am. 1905, p. 228, § 1; reen. R.C. & C.L., § 1931; C.S., § 3463; am. 1925, ch. 85, § 1, p. 119; I.C.A., § 30-801; am. 1961, ch. 222, § 1, p. 358; am. 1963, ch. 106, § 1, p. 328; am. 1967, ch. 330, § 1, p. 965; am. 1978, ch. 42, § 1, p. 75; am. 1980, ch. 181, § 1, p. 402; am. 1989, ch. 91, § 1, p. 215; am. 2005, ch. 213, § 1, p. 637.]

### STATUTORY NOTES

**Cross References.** — Airports, counties and municipalities authorized to cooperate, § 21-401 et seq.

County jails, § 20-601 et seq.

Courthouses and appurtenances thereto exempt from execution, § 11-605.

Furnishing office for service officer, § 65-602.

Insurance of county property, duty of county commissioner, § 31-814.

**Effective Dates.** — Section 3 of S.L. 1978, ch. 42 declared an emergency. Approved March 3, 1978.

### JUDICIAL DECISIONS

#### ANALYSIS

Application.

Authority to pay costs.

Bids.

Contracts.

—Purchase of real estate.

—Implied.

In general.

#### Application.

Where issuance of bonds in certain amount is authorized at election, commissioners can not incur an indebtedness for the same purpose in excess of the amount of the bonds. *Mittry v. Bonneville County*, 38 Idaho 306, 222 P. 292 (1924).

#### Authority to Pay Costs.

Statutory authority to build jail carries with it the power to pay all necessary costs. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

#### Bids.

There is no authority in this section for the county commissioners to erect a courthouse annex without letting such construction out for bid. *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

#### Contracts.

##### —Purchase of Real Estate.

This section does not apply to contracts for purchase of real estate for erection of courthouse when purchase of such ground would not create an indebtedness on part of county

in excess of the revenue of county for the year in question, after deducting from said revenue all indebtedness incurred by said county up to time of said purchase. *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454 (1897).

##### —Implied.

In suit by contractor to recover additional expenses based on agreement with commissioners for construction of county jail he was entitled to recover on implied contract even though not expressly alleged. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

#### In General.

Where there was no evidence that §§ 31-1001 and 31-4003 (now repealed) had been complied with in letting of contract by county to builder for construction of race track facilities with lease back provisions, the cause will be remanded for a specific determination thereof. *Swensen v. Buildings, Inc.*, 93 Idaho 466, 463 P.2d 932 (1970).

**Cited in:** *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).



## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 440 et seq. and 491 et seq.  
**C.J.S.** — 20 C.J.S., Counties, §§ 143-149.

**31-1002. Bond election.** — Whenever the interests of any county require it, and the board of commissioners of the county deem it for the public good to purchase a site and erect thereon a courthouse and jail, or either thereof, and furnish the same; and the expense of purchasing such site, or erecting such buildings of suitable size and capacity and furnishing the same would exceed the revenue of one (1) year applicable to that purpose, and the board deems it for the public good to bond the county for the purpose of providing funds therefor, the board of commissioners may, by a resolution adopted at a regular or any special meeting called for that purpose, call an election for such purpose, subject to the provisions of section 34-106, Idaho Code, or submit, at any general election, the question of issuing negotiable coupon bonds to an amount deemed necessary to defray the expenses of purchasing such site and erecting and furnishing such buildings. [1905, p. 73, § 1; reen. R.C. & C.L., § 1932; C.S., § 3464; I.C.A., § 30-802; am. 1995, ch. 118, § 24, p. 417.]

**31-1003. Purchase of site — Letting of contract.** — If two-thirds ( $\frac{2}{3}$ ) of the qualified electors of the county voting at such election vote in favor of the issuance of the bonds, the board of commissioners shall select and purchase, or, if necessary, cause to be condemned, for the use of the county, a suitable site for said buildings, and cause to be prepared plans and specifications for such courthouse and jail, or either thereof as the case may be, and advertise in a weekly newspaper of the county for thirty (30) days calling for sealed proposals or bids for the construction of said buildings. The published notice shall contain a general statement of the character and limited cost of the building or buildings, and state that the plans and specifications thereof may be found and examined in the office of the clerk of the board, and state the day when the sealed proposals will be opened and considered. The sealed proposals must be opened and considered publicly, and the contract let to the lowest responsible bidder, unless all bids are rejected; and if all bids are rejected, the board may advertise for new bids, or let the contract, provided it be for a less sum than that offered by the lowest bidder. The board must require a good and sufficient bond of the contractor conditioned for the faithful performance of the contract according to the plans and specifications. The board shall have full power and authority to do and perform any act in relation to purchasing such site and erecting said buildings, at any special or called meeting when all members of the board are present, or at any regular meeting of the board. [1905, p. 73, § 3; reen. R.C. & C.L., § 1933; C.S., § 3465; I.C.A., § 30-803.]

## STATUTORY NOTES

**Cross References.** — Splitting or separating purchases or work projects to evade competitive bidding, § 59-1026.

## JUDICIAL DECISIONS

**Collaboration with Associates.**

A county commissioner is required to look after and supervise the government and business affairs of the county, in collaboration with his associates on the board of county

commissioners. *Stover v. Washington County*, 63 Idaho 145, 118 P.2d 63 (1941).

**Cited in:** *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

**31-1004. Statutes governing election and bond issue.** — The board shall be governed in calling and holding said election, and in the issuance and sale of said bonds, and in providing for the payment of the interest thereon, and for their redemption, by the provisions of sections 31-1901 to 31-1909. [1905, p. 73, § 2; am. R.C., § 1934; compiled and reen. C.L., § 1934; C.S., § 3466; I.C.A., § 30-804.]

## STATUTORY NOTES

**Compiler's Notes.** — Sections 31-1906 to 31-1909, referred to in this section, were repealed by S.L. 1988, ch. 278, § 1.

**31-1005. Joint city and county sites and buildings.** — Any county and a city, or another county are hereby authorized and empowered to acquire and own a site or sites within the limits of any such city or county and jointly to construct public buildings thereon, to be jointly owned and used by such counties and city; or one (1) of such municipalities may purchase an interest in a site already owned by the other and they may then jointly construct or operate public buildings thereon. [1919, ch. 126, § 1, p. 412; C.S., § 3467; am. 1931, ch. 109, § 4, p. 188; I.C.A., § 30-805; am. 1990, ch. 123, § 2, p. 293.]

## \* STATUTORY NOTES

**Cross References.** — Joint action by public agencies, §§ 67-2326 — 67-2333.

Powers granted by §§ 31-1008 — 31-1010 extended to this section, § 31-1010.

**31-1006. Joint sites and buildings — Contracts.** — The boards of county commissioners of such counties and the city council or other governing body of such city, are hereby authorized and empowered to enter into all necessary contracts or agreements with respect thereto and also all necessary contracts and agreements as between such counties and city for apportioning the expenses of acquiring such site and constructing such buildings for the maintenance, operation and use thereof, and may from time to time, modify or change such agreements as they may deem best. [1919, ch. 126, § 2, p. 412; C.S., § 3468; I.C.A. § 30-806; am. 1990, ch. 123, § 3, p. 293.]

## STATUTORY NOTES

**Cross References.** — Powers granted by §§ 31-1008 — 31-1010 extended to this section, § 31-1010.

**Effective Dates.** — Section 4 of S.L. 1990, ch. 123 declared an emergency. Approved March 23, 1990.

**31-1007. Joint sites and buildings — Indebtedness.** — Counties and cities operating under sections 31-1005 and 31-1006 are hereby authorized and empowered to incur indebtedness and issue bonds for any of the purposes authorized hereby in the same manner in which they are now or hereafter may be authorized by law to incur indebtedness and issue bonds for similar purposes. [1919, ch. 126, § 3, p. 412; C.S., § 3469; I.C.A., § 30-807.]

#### STATUTORY NOTES

**Cross References.** — Powers granted by §§ 31-1008 — 31-1010 extended to this section, § 31-1010.

**31-1008. County building construction fund — Levy of tax — Special election.** — (1) In lieu of the issuance of bonds for the purpose specified in section 31-1002, Idaho Code, the board of county commissioners of any county shall have power, in addition to the power specified in said section 31-1002, Idaho Code, when in their judgment the best interests of the county so required, to create and establish a fund for the purpose specified in said section 31-1002, Idaho Code, and for said purposes are hereby authorized and empowered, by resolution adopted at a regular meeting of said board, or at any special meeting called for that purpose, to levy, in addition to all other taxes now authorized by law, an annual tax of not exceeding six hundredths percent (.06%) of market value for assessment purposes of all taxable property in such county for the current year, to be certified, extended and collected at the same time and in the same manner as taxes for general county purposes, and to be apportioned, when collected, to a special fund to be known as the "County Building Construction Fund," provided, that in the resolution and for the purposes hereinbefore mentioned such board shall call an election, subject to the provisions of section 34-106, Idaho Code, or submit, at any general election, the question of creating such fund to defray the expenses of purchasing such site and erecting and furnishing such buildings, at which election only such electors may vote as are qualified to vote at elections held for the issuance of general obligation bonds, and which election shall in all respects be governed and held in the same manner as is now required by law for the holding of elections to determine the question of the issuance of general obligation bonds. If, at such election two-thirds ( $\frac{2}{3}$ ) of the qualified voters voting at such election shall have voted to create such funds, then such board of county commissioners may annually levy the taxes for the purposes hereinbefore mentioned. Such fund shall remain intact, subject to investment as hereinafter provided, until the same shall, when augmented by the proceeds of similar levies in succeeding years, be adequate in the judgment of such board to defray the entire cost of purchasing a site and constructing the improvements aforesaid and completely furnishing the same, and no part of such fund shall be expended until complete plans and specifications have been adopted and contracts entered into insuring the completion of such purchase and construction within the limitations of such fund, nor



shall the construction of any courthouse or jail be undertaken until such fund is adequate to insure the proper equipment and furnishing thereof.

(2) Notwithstanding the limitations imposed in subsection (1) of this section, the board of county commissioners may create a fund upon a finding by the board that a critical need exists for justice or law enforcement related facilities. The board may deposit any unexpended sums from the county current expense fund or the county justice fund into the county building construction fund or may deposit into the fund all or a part of any non-ad valorem tax revenues not otherwise restricted or dedicated by law. On or before the thirty-first day of March of each odd-numbered year, the board may review the budget for the current fiscal year and adjust the expenditures in the budget to provide for deposits into the fund from revenues not otherwise budgeted or to provide for deposits into the fund from revenues projected to be surplus over budgeted revenues. The adjustments may be made only after a notice is given and a public hearing is held substantially similar to that contained in section 31-1604, Idaho Code. After the creation of the fund, the board may, in strict compliance with section 63-802, Idaho Code, deposit any amount into the fund on an annual basis.

(3) Provided, that no such fund shall be accumulated in excess of two per cent (2%) of the assessed valuation of the property within such county; provided further, that such fund may be used to supplement the proceeds of any bonds issued pursuant to the provisions of sections 31-1002 and 31-1004, Idaho Code, for the purposes aforesaid. [C.S., § 3469A, as added by 1931, ch. 109, § 1, p. 188; I.C.A., § 30-808; am. 1989, ch. 91, § 2, p. 215; am. 1995, ch. 118, § 25, p. 417; am. 1995, ch. 369, § 1, p. 1284; am. 1996, ch. 322, § 8, p. 1029.]

#### STATUTORY NOTES

**Effective Dates.** —\* Section 73 of S.L. in full force and effect on and after January 1, 1996, ch. 322 provided that the act should be 1997.

**31-1009. Investment of fund — Accrual of interest.** — Any funds accumulated as provided in section 31-1007, Idaho Code, may, so far as practicable without jeopardy thereto, be invested by the county treasurer, under the direction of the board of county commissioners; and provided, further, that any portion of such fund not so invested, shall be deposited in accordance with the requirements of the public depository law. All interest earned by such fund shall accrue and be added to the principal thereof and become subject to investment as such. [C.S., § 3469B, as added by 1931, ch. 109, § 2, p. 188; I.C.A., § 30-809; am. 1989, ch. 91, § 3, p. 215.]

**31-1010. Extension of application.** — The powers granted in sections 31-1008, 31-1009 and this section shall be deemed to be, and hereby are, extended and shall apply to sections 31-1005 to 31-1007, and 31-1101, whenever any county and such cities shall, jointly, at such election, have determined to acquire a site or sites and construct, equip and furnish such public buildings without the issuance of bonds therefor. [C.S., § 3469C, as added by 1931, ch. 109, § 3, p. 188; I.C.A., § 30-810.]

**STATUTORY NOTES**

**Compiler's Notes.** — Section 31-1101, referred to in this section, was repealed by S.L. 1989, ch. 19, § 1.

**CHAPTER 11****PUBLIC SCALES****SECTION.**

31-1101 — 31-1107. [Repealed.]

**31-1101 — 31-1107. Public scales. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — These sections, 30-905; I.C., §§ 1101A — 1101F, 1106, 1107; which comprised 1917, ch. 92, §§ 1 — 5, pp. 1970, ch. 20, §§ 1 — 11, p. 38, were repealed 315 — 316; reen. C.L., §§ 1934g — 1934k; by S.L. 1989, ch. 19, § 1. C.S., §§ 3470 — 3474; I.C.A., §§ 30-901 —

**CHAPTER 12****AMUSEMENT RESORTS****SECTION.**

31-1201 — 31-1207. [Repealed.]

**31-1201 — 31-1207. Amusement resorts. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — These sections, 401; I.C.A., §§ 53-301 to 53-307, were repealed which comprised 1925, ch. 219, §§ 1 — 7, p. 401; I.C.A., §§ 53-301 to 53-307, were repealed by S.L. 1989, ch. 19, § 1.

**CHAPTER 13****PEDDLERS — LICENSES****SECTION.**

31-1301 — 31-1306. [Repealed.]

**31-1301 — 31-1306. Peddlers — Licenses. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — These sections, 2354, 2356 — 2359; I.C.A., §§ 53-1901, 53- which comprised 1905, p. 97, §§ 1 — 6; reen. 1902, 53-1904 to 53-1907, were repealed by R.C. & C.L., §§ 1528 — 1533; C.S., §§ 2353, S.L. 1989, ch. 19, § 1.

## CHAPTER 14

## FIRE PROTECTION DISTRICT

## SECTION.

- 31-1401. Purpose and policy of law — Short title.
- 31-1402. Creation and organization of district.
- 31-1403. Petition.
- 31-1404. Notice of hearing.
- 31-1405. Notice of election.
- 31-1406. Election — Qualification of electors — Canvass.
- 31-1407. Canvass by board of commissioners — Validity of organization.
- 31-1408. Fire protection board — Appointment of commissioners — Oath.
- 31-1408A. [Amended and Redesignated.]
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- 31-1410. Election of commissioners.
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- 31-1411B. [Amended and Redesignated.]
- 31-1412. Annexation of territory in adjoining county.
- 31-1413. Consolidation of districts — Hearing — Protest — Election.
- 31-1414. Election for the consolidation of districts.
- 31-1415. Organization of board — Meetings — Officers — Official bonds.
- 31-1416. Fire protection districts are governmental subdivisions of idaho and bodies politic and corporate.
- 31-1416A. [Amended and Redesignated.]
- 31-1417. Corporate powers and duties of

## SECTION.

- board of fire protection commissioners.
- 31-1417A. [Amended and Redesignated.]
- 31-1418. Temporary inability of commissioner.
- 31-1419. Fire protection district has legal title to property.
- 31-1419A. [Amended and Redesignated.]
- 31-1420. Procedure for sale, conveyance and disposition of property.
- 31-1420A. Special levy conditions — Authorization [Null and void.]
- 31-1421. Compensation and benefits — Expenses — Liability.
- 31-1422. Budget and hearing — Notice of hearing — Public inspection.
- 31-1423. Levy.
- 31-1424. Duties of county commissioners.
- 31-1424A. [Amended and Redesignated.]
- 31-1425. Exemptions.
- 31-1426. Handling of district funds.
- 31-1427. Indebtedness prohibited — Exceptions.
- 31-1428. Carry over — Fund balance.
- 31-1429. Inclusion, annexation or withdrawal of area in cities.
- 31-1430. Cooperation and reciprocating use of firefighting forces and apparatus of districts and cities.
- 31-1430A. [Repealed.]
- 31-1430B. [Amended and Redesignated.]
- 31-1431. Contracts between fire protection districts and individual property owners outside of district.
- 31-1432. Construction of chapter.
- 31-1433. Continuation of existing districts — Validating acts of officers.
- 31-1434. Any dissolution.
- 31-1435. Separability.
- 31-1436. Nonliability of agency for delay in report of fire — Exception.
- 31-1437. Liability for indebtedness of fire protection districts after boundary changes.
- 31-1438. [Amended and Redesignated.]

**31-1401. Purpose and policy of law — Short title.** — The protection of property against fire and the preservation of life, and enforcement of any of the fire codes and other rules that are adopted by the state fire marshal pursuant to chapter 2, title 41, Idaho Code, are hereby declared to be a public benefit, use and purpose. Any portion of a county not included in any other fire protection district may be organized into a fire protection district under the provisions of this chapter. All taxable property within any fire protection district created under the provisions of this chapter is and shall be benefited ratably in proportion to assessed valuation by the creation and



maintenance of such district, and all taxable property within any such district shall be assessed equally in proportion to its assessed valuation for the purpose of and in accordance with the provisions of this chapter. This chapter shall be known as the "Fire Protection District Law," and whenever cited, enumerated, referred to or amended, may be designated as the "Fire Protection District Law," adding when necessary the code section number. [1943, ch. 161, § 1, p. 324; am. 1974, ch. 77, § 1, p. 1164; am. 1985, ch. 178, § 2, p. 459; am. 2006, ch. 318, § 1, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, inserted "and enforcement of any of the fire codes and other rules that are adopted by the state fire marshal pursuant to chapter 2, title 41, Idaho Code" near the beginning.

**Effective Dates.** — Section 2 of S.L. 1974, ch. 77 declared an emergency. Approved March 21, 1974.

#### JUDICIAL DECISIONS

**Right to Operate Ambulance Service.**

The "preservation of life" provision in this section extends beyond the preservation of life from fire: thus, the right to operate an ambulance service for the preservation of the lives of its residents is encompassed within

the fire district's power set forth in this section. *Big Sky Paramedics, LLC v. Sagle Fire Dist.*, 140 Idaho 435, 95 P.3d 53 (2004).

**Cited in:** *Greater Boise Auditorium Dist. v. Royal Inn*, 106 Idaho 884, 684 P.2d 286 (1984).

#### RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 99, 415-456.

**31-1402. Creation and organization of district.** — (1) Whenever twenty-five (25) or more of the holders of title, or evidence of title, to lands aggregating not less than one thousand (1,000) acres of contiguous territory, or consisting of contiguous territory of less extent but having market value for assessment purposes of at least five hundred thousand dollars (\$500,000) at the last preceding county assessment, desire to provide for the organization of the same as a fire protection district, none of their lands being included within the boundaries of an already created and organized fire protection district under the terms of this chapter, a district may be created and organized as provided in this chapter.

(2) All creations and organizations of fire protection districts and annexations to existing fire protection districts during the twelve (12) month period preceding the effective date [June 1, 1994] of this act shall be deemed to be in full compliance with all applicable laws regardless of prior interpretations. [1943, ch. 161, § 2, p. 324; am. 1980, ch. 350, § 5, p. 887; am. 1984, ch. 202, § 1, p. 493; am. 1994, ch. 360, § 1, p. 1127.]

**31-1403. Petition.** — (1) A petition shall first be presented to the board of county commissioners and filed with the clerk of the board of commissioners of each county in which the proposed fire protection district is to be

situated, signed by the number of holders of title, or evidence of title specified in section 31-1402, Idaho Code, which petition shall plainly and clearly designate the boundaries of the proposed fire protection district, and shall state the name of the proposed district, and shall be accompanied by a map thereof. The petition, together with all maps and other papers filed therewith shall, at all proper hours, be open to public inspection in the office of said clerk of the board of commissioners between the date of their said filing and the date of the election. The petition may be in one (1) paper or in several papers.

(2) Whenever a petition shall be filed, prior to the publication of notice of hearing pursuant to section 31-1404, Idaho Code, the petitioners shall deposit with the board of county commissioners a sum sufficient to defray the costs of publishing and election as provided by this chapter. In the event a fire protection district is organized, the petitioners shall be reimbursed the amount of their deposit from the first tax moneys collected by the district as provided by this chapter. The amount required to be paid under this subsection shall be determined by the board of county commissioners. [1943, ch. 161, § 3, p. 324; am. 1986, ch. 137, § 1, p. 367; am. 2006, ch. 318, § 2, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, added the subsection (1) designation and subsection (2).

**31-1404. Notice of hearing.** — When such petition is presented to the board of county commissioners and filed in the office of the clerk of such board, the said board shall set a time for a hearing upon such petition, which time shall not be less than four (4) nor more than six (6) weeks, from the date of the presentation and filing of such petition. A notice of the time of such hearing shall be published by said board, once each week for three (3) successive weeks previous to the time set for such hearing, in a newspaper published within each county in which said district is to be situated. Said notice shall state that a fire protection district is proposed to be organized, giving the proposed boundaries thereof, and that any taxpayer within the proposed boundaries of such proposed district may on the date fixed for such hearing appear and offer any testimony pertaining to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property therein or therefrom. After hearing and considering any and all testimony, if any such be interposed, the county commissioners shall thereupon make an order thereon either denying such petition or granting the same, with or without modification, and shall accordingly fix the boundaries of such proposed district in any order granting such petition. The boundaries so fixed shall be the boundaries of said district after its organization be completed as provided by this chapter, and a map showing the boundaries of such proposed district as finally fixed and determined by the board of county commissioners shall be prepared and filed in the office of the clerk of said board.

If the district is to be situated in two (2) or more counties, each board of county commissioners shall coordinate the hearing date and the publications of notice so that only one (1) hearing need be held. Unless otherwise agreed to by each board of county commissioners involved, the hearing shall be held in the county with the largest area to be included within the district, and the boards of county commissioners are hereby specifically authorized to act in a joint manner for such purposes. [1943, ch. 161, § 4, p. 324; am. 1986, ch. 137, § 2, p. 367; am. 1996, ch. 360, § 1, p. 1212.]

#### STATUTORY NOTES

**Cross References.** — Publication of notices, § 60-101 et seq.

**31-1405. Notice of election.** — After the county commissioners have made their order finally fixing and determining the boundaries of the proposed district, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed fire protection district for the purpose of determining whether or not the same shall be organized under the provisions of this chapter. Such notice shall plainly and clearly designate the boundaries of such proposed fire protection district, and shall state the name of the proposed district as designated in the petition and shall state that a map showing the boundaries of said district is on file in his office.

Such notice shall be published first not less than fifteen (15) days prior to the election, and a second publication not less than five (5) days prior to such election, in a newspaper published within the county aforesaid. Such notice shall require the electors to cast ballots which shall contain the words “.... fire protection district, yes,” or “.... fire protection district, no” or words equivalent thereto. No person shall be entitled to vote at any election held under the provisions of this chapter unless he shall possess all the qualifications required of electors under the general laws of the state, and be a resident of the proposed district.

If the district is to be situated in two (2) or more counties, the boards of county commissioners shall provide that the election be held on the same day in each county. [1943, ch. 161, § 5, p. 324; am. 1986, ch. 137, § 3, p. 367; am. 1995, ch. 118, § 26, p. 417; am. 2006, ch. 318, § 3, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, substituted “fifteen (15) days” for “twelve (12) days” in the second paragraph.

**31-1406. Election — Qualification of electors — Canvass.** — Such election shall be conducted in accordance with the general laws of the state, including the provisions of chapter 14, title 34, Idaho Code. The board of county commissioners shall establish as many election precincts within such proposed fire protection district as may be necessary, and define the boundaries thereof, which said precincts may thereafter be changed by the



fire protection board of such district in case such district be organized. Each board of county commissioners shall also appoint three (3) judges of election for each such election precinct, who shall perform the same duties, as near as may be, as judges of election under the general laws of the state; and the result of such election shall be certified, and canvassed and declared by the board of county commissioners. [1943, ch. 161, § 6, p. 324; am. 1982, ch. 254, § 6, p. 646; am. 1986, ch. 137, § 4, p. 367; am. 1995, ch. 118, § 27, p. 417.]

#### STATUTORY NOTES

**Cross References.** — Conduct of elections, §§ 34-1101 — 34-1112.

**31-1407. Canvass by board of commissioners — Validity of organization.** — Immediately after any election for voting upon the organization of a fire protection district, the judges of said election shall forward the official results of said election to the clerk of said board of commissioners. The said board of commissioners shall meet within ten (10) days after said returns are received and shall proceed to canvass the votes cast at such election, and if, upon canvass, it shall appear that one-half ( $\frac{1}{2}$ ) or more of said votes are "... fire protection district, no," then a record of that fact shall be duly entered upon the minutes of said board, and all proceedings in regard to the organization of said district shall be void. If, however, it shall appear upon such canvass, that more than one-half ( $\frac{1}{2}$ ) of the votes cast are "... fire protection district, yes," the said board shall, by order entered on its minutes, declare such territory duly organized as a fire protection district under the name designated in the petition. After the election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number of qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of such organization after six (6) months from and after the making and entering of the order provided for in this section. Such board shall cause one (1) copy of such order, duly certified, to be filed for record in the office of the county recorder of the county in which said district is situated and shall transmit to the governor one (1) certified copy thereof.

From and after the date of such filing of said order of the board of county commissioners declaring such territory duly organized as a fire protection district, the organization of such district shall be complete.

If the district is to be situated in two (2) or more counties, the boards of county commissioners shall coordinate the canvass of the votes cast and make one (1) joint announcement. If a majority of the votes cast in any county are against the formation of the district, such rejection shall void the organization of the district in all counties. [1943, ch. 161, § 7, p. 324; am. 1986, ch. 137, § 5, p. 367.]

**31-1408. Fire protection board — Appointment of commissioners — Oath.** — (1) There shall be three (3) fire protection commissioners in each district, who shall constitute the fire protection board. The first fire protection commissioners of such fire protection district shall be appointed

by the governor. The certificate of such appointment shall be made in triplicate; one (1) certificate shall be filed in the office of the county recorder of the county; one (1) with the clerk of the board of county commissioners, and one (1) with the assessor and tax collector of the county. Every fire protection commissioner and appointed officer shall take and subscribe the official oath, which oath shall be filed in the office of the board of fire protection commissioners. If the district is situated in two (2) or more counties, not more than two (2) of the fire protection district commissioners shall be from the same county, unless pursuant to section 31-1410A, Idaho Code, the board is comprised of five (5) members, in which event not more than three (3) of the commissioners shall be from the same county.

(2) The oath of office of fire protection commissioners and appointed officers shall be taken before the secretary or the president of the board of the fire district on the second Monday of January succeeding each general election. Provided however, in the event, for any reason, of an inability to appear for the taking of the oath, a duly elected fire protection commissioner may be sworn in and may subscribe to the oath wherever he may be, provided he appear before an officer duly authorized to administer oaths, and provided further, that any person who is in any branch of the armed forces of the United States of America, may appear before any person qualified to administer oaths as prescribed in section 55-705, Idaho Code, and may take and subscribe the oath of office as provided for in section 59-401, Idaho Code, and the oath of office shall have the same force and effect as though it were taken before the secretary or the president of the fire district pursuant to this subsection. [1943, ch. 161, § 8, p. 324; am. 1986, ch. 137, § 6, p. 367; am. 1998, ch. 190, § 1, p. 691; am. 2006, ch. 318, § 4, p. 990.]

#### STATUTORY NOTES

**Cross References.** — Oath of office, § 59-401.

**Amendments.** — The 2006 amendment, by ch. 318, added the subsection (1) designa-

tion and therein inserted “and appointed officer” in the fourth sentence and “pursuant to section 31-1410A, Idaho Code” in the fifth sentence; and added subsection (2).

#### 31-1408A. [Amended and Redesignated.]

#### STATUTORY NOTES

**Compiler’s Notes.** — Former § 31-1408A has been redesignated as § 31-1410A, pursuant to S.L. 2006, ch. 318, § 5.

**31-1409. Residence qualifications of commissioners — Term of office — Vacancies.** — (1) At the meeting of the board of county commissioners at which the fire protection district is declared organized, as provided by section 31-1407, Idaho Code, the county commissioners shall divide the fire protection district into three (3) subdivisions, as nearly equal in population, area and mileage as practicable, to be known as fire protection commissioners subdistricts one, two and three. Not more than

one (1) of said commissioners shall be an elector of the same fire protection subdistrict. The first commissioners appointed by the governor shall serve until the next fire protection district election, at which their successors shall be elected. The term of office for fire protection commissioners shall commence on the second Monday of January succeeding each general election. Commissioners appointed and elected must be electors resident within the district for at least one (1) year.

(2) Any fire protection commissioner vacancy occurring, other than by the expiration of the term of office, shall be filled by the fire protection board. If a duly elected or appointed fire protection commissioner resigns, withdraws, becomes disqualified, refuses or becomes otherwise unable to perform the duties of office for longer than ninety (90) days, the board, on satisfactory proof of the vacancy, shall declare the office vacant. The board shall fill any vacancies within sixty (60) days of learning of the vacancy. When a vacancy occurs, the board shall direct the secretary to cause a notice of the vacancy to be published in at least one (1) issue of a newspaper of general circulation within the district. The notice shall include the date and time of the meeting when the board will vote to fill the vacancy, and the deadline for qualified elector residents interested in being appointed to the position to submit a written request for appointment to the board. Should the board fail to agree on an individual to fill the vacancy, it shall select the individual by a coin toss to be conducted at a fire protection board meeting. Candidates for the vacancy shall be invited by the board to attend the meeting and observe the coin toss. The candidate who wins the coin toss shall be appointed to fill the vacancy. [1943, ch. 161, § 9, p. 324; am. 1986, ch. 137, § 7, p. 367; am. 1996, ch. 360, § 2, p. 1212; am. 2006, ch. 318, § 6, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, added the subsection (1) designation and therein substituted the present fourth sentence for one which read: “Any vacancy occurring in the office of the fire

protection commissioner, other than by the expiration of the term of office, shall be filled by the fire protection board”; and added subsection (2).

**31-1410. Election of commissioners.** — (1) On the first Tuesday following the first Monday of November, following the organization of a fire protection district, three (3) fire protection district commissioners shall be elected. Every year thereafter, one (1) commissioner shall be elected, except for the fourth year when no election of a fire commissioner shall occur unless a fire protection district has voted to increase the size of its board in accordance with section 31-1410A, Idaho Code. The board of fire protection commissioners shall have power to make such regulations for the conduct of such election as are consistent with the statutory provisions of chapter 14, title 34, Idaho Code. At their meeting next preceding such election, the board of fire protection commissioners shall divide the district into three (3) subdistricts as nearly equal in population, area and mileage as practicable, to be known as fire protection commissioners subdistricts one, two and three. Thereafter, at the January meeting of the board of fire protection commissioners preceding any regularly scheduled election, such subdistricts



may be revised by the board when it deems it necessary due to significant shifts in population. Provided however, of the commissioners comprising the board, not more than one (1) commissioner shall be an elector of the same fire protection commissioners subdistrict. The revision of subdistricts shall not disqualify any elected commissioner from the completion of the term for which he or she has been duly elected. At the first election following organization of a fire protection district the commissioner from fire protection subdistrict one shall be elected to a term of one (1) year, the commissioner from subdistrict two shall be elected to a term of two (2) years, and the commissioner from fire protection subdistrict three shall be elected to a term of three (3) years; thereafter the term of office of all commissioners shall be four (4) years. Such elections and all other elections held under this law, shall be held in conformity with the general laws of the state including chapter 14, title 34, Idaho Code.

(2) Upon the unanimous agreement of the existing board of commissioners, a fire protection district whose terms and elections were established by prior law may elect to convert to the election of commissioners as provided in subsection (1) of this section. A fire district may adopt any conversion schedule reflecting the intent of the schedule provided in subsection (1) of this section, so long as one (1) commissioner is elected each year, except for the fourth year when no election shall be held. The conversion schedule shall not result in the extension of the term of office of any commissioner serving at the time of the conversion.

(3) In any election for fire protection district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict to stand for election, and the board of the fire protection district shall declare such candidate elected as commissioner, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The results of any election for fire protection district commissioner shall be certified to the county clerk of the county or counties in which the district is located. [1943, ch. 161, § 10, p. 324; am. 1951, ch. 135, § 1, p. 311; am. 1982, ch. 361, § 1, p. 912; am. 1995, ch. 118, § 28, p. 417; am. 1998, ch. 190, § 3, p. 691; am. 2000, ch. 336, § 1, p. 1128; am. 2003, ch. 90, § 1, p. 275; am. 2006, ch. 318, § 7, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, in subsection (1), inserted “unless a fire protection district has voted to increase the size of its board in accordance with section 31-1410A, Idaho Code,” in the second sentence, substituted “may be revised” for “shall

be revised but” and inserted “by the board when it deems it necessary due to significant shifts in population” in the fifth sentence, and inserted “Provided however” in the sixth sentence.

**31-1410A. Decision to increase the size of the board.** — Subsequent to the creation of a fire protection district and the appointment of the first board of fire protection commissioners, the fire protection board may, by a majority vote of all of the fire protection district board members elect to

increase the size of the board to five (5) members.

If the board of fire protection commissioners elects to expand the board to five (5) members, the existing board members shall subdivide the district into five (5) subdivisions as nearly equal in population, area and mileage as practicable to be known as subdistricts one, two, three, four and five.

At the first election following the decision of the board of fire protection commissioners to expand the board from three (3) to five (5) members, five (5) commissioners shall be elected. The commissioners from fire protection subdistrict one shall be elected for a term of one (1) year; the commissioner from subdistrict two for two (2) years; the commissioner from subdistrict three for three (3) years; and the commissioners from subdistricts four and five shall be elected for terms of four (4) years. Thereafter, the term of all commissioners shall be four (4) years.

A fire district which, prior to the effective date of this section, had elected to expand a board from three (3) to five (5) members shall, prior to the next election of the district, adopt a transition schedule as nearly reflecting the schedule provided in this section as possible so that one (1) commissioner is elected each year except that in one (1) year, two (2) commissioners are elected. [I.C., § 31-1408A, as added by 1998, ch. 190, § 2, p. 691; am. 2001, ch. 109, § 1, p. 372; am. and redesisg. 2006, ch. 318, § 5, p. 990.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 13-1410A, which comprised I.C., § 31-1410A, as added by 1980, ch. 229, § 1, p. 510, was repealed by S.L. 1995, ch. 118, § 112, effective July 1, 1995.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1408A.

**31-1411. Annexation of territory in same county — Petition — Hearing — Order — Certification to county commissioners — Alternate procedure — Election — Petition to de annex property from existing district and annex into another district.** — After the organization of a fire protection district, additional contiguous or noncontiguous territory lying within the same county may be added thereto and shall thereupon and thenceforth be included in such district. Territory that is not contained in an existing fire district, and is not immediately adjoining the boundaries of the fire district into which annexation is sought, may be annexed into the district provided the territory consists of not less than forty (40) contiguous acres. At least seventy-five percent (75%) or more of the owners or contract purchasers of the land sought to be annexed shall petition the fire protection board and request annexation of the territory particularly described in said petition. Upon receipt of any such petition the fire protection board shall hold a hearing not less than ten (10) nor more than thirty (30) days thereafter, or upon the written consent of the petitioner within one hundred eighty (180) days, and said board shall cause notice of such hearing, designating the time and place, to be published in at least one (1) issue of a newspaper of general circulation within the district. Any person supporting or objecting to such petition shall be heard at such hearing, if in attendance, and at the close of such hearing said board shall

approve or reject said petition. If the board approves said petition it shall make an order to that effect and certify a copy of said order containing an accurate legal description of the annexed territory to the board of county commissioners of the county where said fire district is situated. Said board of county commissioners shall thereupon enter an order of annexation and cause the same to be recorded so as to include the annexed property on the tax rolls as in this chapter provided.

In the event that more than twenty-five percent (25%) of the owners or contract purchasers of the land sought to be annexed do not join in said petition, and the board determines by resolution entered on the minutes of the board, that the annexation would be in the best interests of the district and that an election on the issue should be held, additional territory may nevertheless be annexed by the affirmative vote of a majority of the qualified electors of such additional territory voting on the question at an election held therefor, which vote may be taken at an election held as provided in section 31-1405, Idaho Code. The same procedure shall be adopted as provided in sections 31-1402 through 31-1406, Idaho Code.

If owners or contract purchasers of territory located within an existing fire protection district seek to petition to be annexed into another fire protection district, they must demonstrate that they are likely to receive an improved response to requests for services from the other fire protection district and obtain written approval of the board of the fire protection district within which the territory is already located. The written approval must be attached to their petition to annex. The procedure for the annexation petition shall be the same as otherwise provided in this section. [1943, ch. 161, § 11, p. 324; am. 1959, ch. 139, § 1, p. 314; am. 1984, ch. 202, § 2, p. 493; am. 1994, ch. 360, § 2, p. 1127; am. 1995, ch. 84, § 1, p. 248; am. 1995, ch. 118, § 29, p. 417; am. 1996, ch. 360, § 3, p. 1212; am. 2006, ch. 318, § 8, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, in the section heading, added “petition to de annex property from existing district and annex into another district”; in the introductory paragraph, substituted “Territory that is not contained in an existing fire district and is not immediately adjoining the boundaries of the fire district into which annexation is sought, may be annexed into the district provided the territory consists” for “Noncontiguous territory annexed to an existing fire protection district shall consist”; in the second paragraph, deleted “or the petition is denied as above set forth” following “peti-

tion,” inserted “and the board determines by resolution entered on the minutes of the board, that the annexation would be in the best interests of the district and that an election on the issue should be held,” and deleted the former second sentence, which read: “But such additional territory shall not be annexed to or be included within the district unless such annexation and inclusion be first approved by the fire protection board of the existing district by resolution entered on the minutes of such board prior to the election on the question of annexation”; and added the last paragraph.



**31-1411A. [Amended and Redesignated.]****STATUTORY NOTES**

**Compiler's Notes.** — Former § 31-1411A has been amended and redesignated as § 31-1413, pursuant to S.L. 2006, ch. 318, § 9.

**31-1411B. [Amended and Redesignated.]****STATUTORY NOTES**

**Compiler's Notes.** — Former § 31-1411B been amended and redesignated as § 31-1414, pursuant to S.L. 2006, ch. 318, § 10.

**31-1412. Annexation of territory in adjoining county.** — After the organization of a fire protection district, additional territory, contiguous or noncontiguous thereto and located wholly within an adjoining county, may be added to the district and become a part thereof as hereinafter provided in this section. Noncontiguous territory annexed to an existing fire protection district shall consist of not less than forty (40) contiguous acres. The proceedings for annexation shall be the same as the proceedings for the creation and organization of a fire protection district with the following exceptions and modifications:

(1) Such proceeding may be initiated by two (2) or more of the holders of title or evidence of title to lands aggregating not less than one hundred (100) acres.

(2) A petition, such as is required by section 31-1403, Idaho Code, shall be filed with the fire protection board of the fire protection district into which petitioners seek to be annexed. The petition shall accurately describe the boundaries of the territory and name and describe the fire protection district to which annexation is sought. The petition shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed, and showing the location of the intervening county line. The fire protection board shall follow the notice and public hearing requirements contained in section 31-1411, Idaho Code, and if it approves of the annexation proposal, it will issue a written resolution consenting to the proposed annexation. If the fire protection board issues such a resolution, the petitioners shall proceed in accordance with the steps outlined in this section.

(3) A petition, such as is required by section 31-1403, Idaho Code, shall be filed with the board of county commissioners of the county in which is situated the territory proposed to be annexed but shall accurately describe the boundaries of the territory, and name and describe the fire protection district to which annexation is sought, shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed, and showing the location of the intervening county line. The petition must be accompanied by a certified copy of the resolution of the board of fire protection commissioners consenting to the annexation.

(4) The notice of hearing on the petition shall state that certain territory described in the petition, is proposed to be annexed to a fire protection district named in the petition and that any taxpayer within the boundaries of the territory proposed to be annexed may offer objections at the time and place specified. The order entered by the local board of county commissioners on the petition shall, if the petition be granted, fix the boundaries of the annexed territory and direct that a map of it be prepared under the direction of the clerk of the board, and certified copies of the order and map shall be transmitted to the clerk of the board of county commissioners of the county in which the original fire protection district is situated.

(5) An election shall be conducted by the county clerk or elections office in the county where the land sought to be annexed is situated, subject to the provisions of section 34-106, Idaho Code, in the territory proposed to be annexed for the purpose of voting upon the annexation and the notice shall accurately describe the boundaries of the territory proposed to be annexed, shall state the name of the district to which annexation is sought, and that a map showing the boundaries of the district and of the territory proposed to be annexed is on file in the office of the clerk of the local board of county commissioners. The notice shall prescribe the form of ballot to be cast, which shall contain the words "In favor of annexation to .... Fire Protection District" and "Against annexation to .... Fire Protection District," and shall direct that the voter indicate his choice thereon by a cross (X).

(6) The territory proposed to be annexed shall constitute one (1) election precinct and there shall be added to the usual elector's oath, in case of challenge, the following words: "And I am a resident within the boundaries of the territory proposed to be annexed to .... Fire Protection District." The returns of the election shall be canvassed by the board of the county commissioners of the county in which the territory proposed to be annexed is situated, and if it shall appear from the canvass that more than one-half (1/2) of the voters are in favor of the annexation, the board shall, by order entered on its minutes, declare the territory a part of the fire protection district to which annexation is sought, and a certified copy of the order shall be transmitted to the fire protection board of the original district, and also to the board of the county commissioners of the county in which the original district is situated. A certified copy of the order shall also be filed in the office of the county recorder of the county in which the territory proposed to be annexed is situated. At the first meeting of the board of fire protection commissioners following the annexation of property from another county, the board shall resubdivide the expanded fire protection district into three (3) subdivisions, as nearly equal in population and area as practicable. Not more than one (1) fire protection district commissioner shall reside in each subdistrict. If, because of resubdistricting, two (2) or more commissioners reside in the same subdistrict, they shall draw lots to determine who shall remain in office. The remaining commissioners on the board shall appoint, as necessary, persons to fill vacancies created as a result of annexation pursuant to the provisions of section 31-1409, Idaho Code. An appointee shall serve the remainder of the term of office he or she is appointed to fill. Certified copies of appointments of secretary and treasurer of the district

shall be filed with the clerk of the board of county commissioners and with the tax collector of each county in which any portion of the district is situated and all taxes levied by the district shall be certified to, and extended, collected and remitted by, the proper officers of the county in which is situated the property subject to the levy. [1943, ch. 161, § 12, p. 324; am. 1975, ch. 219, § 1, p. 610; am. 1980, ch. 350, § 6, p. 887; am. 1984, ch. 117, § 1, p. 262; am. 1984, ch. 202, § 3, p. 493; am. 1994, ch. 360, § 3, p. 1127; am. 1995, ch. 118, § 30, p. 417; am. 2006, ch. 318, § 11, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, in subsection (1), deleted “or of less area but having market value for assessment purposes of at least one hundred twenty-five thousand dollars (\$125,000)” from the end; added subsection (2) and redesignated the other subsections accordingly; in subsection (3), deleted “of the original district” preceding “consenting to the annexation”; in subsection (5), substituted “conducted by the county clerk or elections office in the county where the land sought to be annexed is situated” for

“held”; and near the middle of subsection (6), substituted “fire protection commissioners” for “county commissioners,” deleted “of county commissioners” preceding “shall resubdivide,” substituted “remaining commissioners on the board” for “county commissioners,” and inserted “pursuant to the provisions of section 31-1409, Idaho Code.”

**Effective Dates.** — Section 4 of S.L. 1994, ch. 360 declared an emergency and provided this act shall be in full force and effect on and after June 1, 1994. Approved April 7, 1994.

**31-1413. Consolidation of districts — Hearing — Protest — Election.** — Any fire protection district may consolidate with one (1) or more existing fire protection districts subject to the following procedure, or pursuant to an election for consolidation as provided in section 31-1414, Idaho Code, and with the following effects:

(1) If, in the opinion of the board of any fire protection district, it would be to the advantage of said district to consolidate with one (1) or more other existing fire protection districts, the said board shall cause to be prepared an agreement for consolidation which shall among other things provide:

(a) The name of the proposed consolidated fire protection district.

(b) That all property of the districts to be consolidated shall become the property of the consolidated district.

(c) That all debts of the districts to be consolidated shall become the debts of the consolidated district.

(d) That the existing commissioners of the districts to be consolidated shall be the commissioners of the consolidated district until the next election, said election to be held pursuant to the terms of section 31-1410, Idaho Code, at which three (3) commissioners shall be elected, unless the agreement of consolidation establishes a five (5) member board, in which case five (5) commissioners shall be elected. If the board consists of three (3) members, commissioners from fire protection subdistricts one and two shall be elected for terms of four (4) years, and the commissioner from fire protection subdistrict three shall be elected for a term of two (2) years. If the board consists of five (5) commissioners, commissioners from fire protection subdistricts one, three and five shall be elected for terms of four (4) years, and the commissioners from fire protection subdistricts two and four shall be elected for an initial term of two (2) years. Thereafter the term of all commissioners shall be four (4) years.



(e) That the employees of the consolidated fire protection district shall be selected from the employees of the fire protection districts being consolidated, which employees shall retain the seniority rights under their existing employment contracts.

(2) After approval of the agreement of consolidation by each of the fire protection district boards involved, the boards of commissioners of each fire protection district shall hold a hearing not less than ten (10) or more than thirty (30) days thereafter, and shall cause notice of the hearing, designating the time and place, to be published in at least one (1) issue of a newspaper of general circulation within the district not less than five (5) days prior to the hearing. Any person supporting or objecting to the petition shall be heard at the hearing, if in attendance, and at the close of the hearing the board shall approve or reject the agreement of consolidation. If each board approves the agreement of consolidation, the agreement shall become effective and the consolidation of the district complete thirty (30) days after the approval unless within the thirty (30) days a petition signed by twenty-five percent (25%) of the qualified electors of one (1) of the fire protection districts objecting to the consolidation be filed with the secretary of the district. In the event of an objection, election shall be held as provided in section 31-1405, Idaho Code, except that the question shall be "consolidation of .... fire protection district, yes," or "consolidation of .... fire protection district, no," or words equivalent thereto. If more than one-half (1/2) of the votes cast are yes, the agreement shall become effective. If more than one-half (1/2) of the votes cast are no, the agreement shall be void and of no effect; and no new consolidation shall be proposed for at least six (6) months following the date of the consolidation election.

(3) Upon the agreement of consolidation becoming effective, the board of the consolidated fire protection district shall file a certified copy of the agreement with the county recorder of each county in which such district is situated, and shall comply with the provisions of section 63-215, Idaho Code. The consolidated district shall thereafter have the same rights and obligations as any other fire protection district organized under the statutes of this state. [I.C., § 31-1411A, as added by 1967, ch. 95, § 1, p. 203; am. 1996, ch. 322, § 9, p. 1029; am. 1997, ch. 372, § 1, p. 1185; am. 1998, ch. 190, § 4, p. 691; am. and redesisg. 2006, ch. 318, § 9, p. 990.]

#### STATUTORY NOTES

**Cross References.** — Notice by mail, § 60-109A.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1411A and redesignated the subsections; in the introductory paragraph updated the section reference; and in subsection (2), substituted "the hearing" for "such meeting" in the second sentence and "twenty-five percent" for "five per cent" in the third sentence.

**Compiler's Notes.** — Former § 31-1413 has been amended and redesignated as § 31-1415, pursuant to S.L. 2006, ch. 318, § 12.

**Effective Dates.** — Section 2 of S.L. 1967, ch. 95 declared an emergency. Approved March 11, 1967.

Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

**31-1414. Election for the consolidation of districts.** — (1) Any two (2) or more fire districts may, in the discretion of the fire district commis-

sioners, or shall, upon a petition signed by ten percent (10%) or more of the electors in the last general election residing in each of the fire protection districts proposed for consolidation, conduct an election in the manner provided in section 31-1405, Idaho Code, at which the following question shall be submitted to the electorate: "Shall ..... fire protection districts be consolidated?" or words equivalent thereto. At least one (1) public hearing shall be held by the boards of fire district commissioners prior to the election. If a majority of the votes cast in each district proposed for consolidation are in favor of consolidation, the districts shall be deemed consolidated and an agreement of consolidation in conformity with the provisions of section 31-1413, Idaho Code, shall be entered into by the fire protection district boards involved, except that an agreement of consolidation entered into pursuant to an election as provided in this section shall not thereafter be subject to an election upon objection as provided in subsection (2) of section 31-1413, Idaho Code.

(2) If two (2) districts are proposed for consolidation and less than a majority of the votes cast in any one (1) of the districts are in favor of the consolidation, the consolidation shall not become effective. If more than two (2) districts are proposed for consolidation, the consolidation may proceed with respect to those districts in which a majority of the votes cast are in favor of the consolidation. [I.C., § 31-1411B, as added by 1997, ch. 372, § 2, p. 1185; am. and redesisg. 2006, ch. 318, § 10, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1411B and added the subsection designations; in subsection (1), updated the section references; and in subsection (2), deleted the last sentence, which read: "The failure of an election for consolidation shall not prohibit a

proposed consolidation under the procedures and subject to the limitations of section 31-1411A, Idaho Code."

**Compiler's Notes.** — Former § 31-1414 has been amended and redesignated as § 31-1416, pursuant to S.L. 2006, ch. 318, § 13.

**31-1415. Organization of board — Meetings — Officers — Official bonds.** — Immediately after qualifying, the board of fire protection commissioners shall meet and organize as a board, and at that time, and whenever thereafter vacancies in the respective offices may occur, they shall elect a president from their number, and shall appoint a secretary and treasurer who may also be from their number, all of whom shall hold office during the pleasure of the board, or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments, under the hand of each of the commissioners, shall be forthwith filed with the clerk of the board of county commissioners and with the tax collector of the county.

As soon as practicable after the organization of the first board of fire protection commissioners, and thereafter when deemed expedient or necessary, such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof, which shall be within the district. Regular meetings shall be held at least quarterly. The minutes of all meetings must show what bills are submitted, considered, allowed or



rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be acted on by the board. All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business. All fire protection districts shall meet the financial audit filing requirements as provided in section 67-450B, Idaho Code. All meetings of fire protection boards shall be noticed and run in accordance with the open meeting law provided for in sections 67-2340 through 67-2347, Idaho Code, inclusive. All records of fire protection districts shall be available to the public in accordance with the provisions of public records law as provided for in chapter 3, title 9, Idaho Code.

The officers of the district shall take and file with the secretary, an oath for faithful performance of the duties of the respective offices. The treasurer shall on his appointment execute and file with the secretary an official bond in compliance with section 41-2604, Idaho Code, in such an amount as may be fixed by the fire protection board but in no case less than ten thousand dollars (\$10,000). [1943, ch. 161, § 13, p. 324; am. 1982, ch. 331, § 1, p. 838; am. and redesisg. 2006, ch. 318, § 12, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1413 and, in the second paragraph, substituted the present fifth sentence for one which read: "Such list shall be signed by the chairman and attested by the secretary; provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order, five (5) days' notice of special meetings: provided, further, that whenever

all members of the board are present, however called, the same shall be deemed a legal meeting and any lawful business may be transacted," added the seventh and eighth sentences, and in the last sentence, substituted the language beginning "of fire protection districts shall be available" for "shall be open to the inspection of any elector during business hours."

**Compiler's Notes.** — Former § 31-1415 has been amended and redesignated as § 31-1417, pursuant to S.L. 2006, ch. 318, § 14.

**31-1416. Fire protection districts are governmental subdivisions of idaho and bodies politic and corporate.** — Every fire protection district upon being organized as provided by this chapter shall be a governmental subdivision of the state of Idaho and a body politic and corporate, and as such has the power specified in this chapter. Its powers can be exercised only by the fire protection board or by agents and officers acting under their authority, or authority of law. The name of the district designated in the order of the board of county commissioners declaring the territory duly organized as a fire protection district, shall be the corporate name of such district, and it must be known and designated thereby in all actions and proceedings touching its corporate right, property and duties. [1943, ch. 161, § 14, p. 324; am. 1978, ch. 336, § 1, p. 867; am. and redesisg. 2006, ch. 318, § 13, p. 990.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-1416, which comprised 1943, ch. 161, § 16, p. 324, was repealed by S.L. 1996, ch. 360 § 5, effective July 1, 1996.



**Amendments.** — The 2006 amendment, § 31-1414, pursuant to S.L. 2006, ch. 318, by ch. 318, renumbered this section from § 13.

### **31-1416A. [Amended and Redesignated.]**

#### **STATUTORY NOTES**

**Compiler's Notes.** — Former § 31-1416A has been amended and redesignated as § 31-1418, pursuant to S.L. 2006, ch. 318, § 15.

**31-1417. Corporate powers and duties of board of fire protection commissioners.** — A board of fire protection commissioners shall have discretionary powers to manage and conduct the business and affairs of the district. The discretionary powers shall include, but not be limited to, the following:

- (1) To sue and be sued.
- (2) To purchase, hold, sell and convey real property, make such contracts, and purchase, hold, sell and dispose of such personal property as may be necessary or convenient for the purposes of this chapter.
- (3) To levy and apply such taxes for purposes under its exclusive jurisdiction as are authorized by law, and to approve the annual district budget by resolution of the board.
- (4) To make and execute all necessary contracts.
- (5) To adopt such rules and resolutions as may be necessary to carry out their duties and responsibilities.
- (6) To hire, pay, promote, discipline and terminate district employees, contractors and agents, or delegate such powers.
- (7) To set compensation and benefit levels for employees, commissioners, contractors and agents.
- (8) To appoint members of district appeals boards and investigatory boards for the purpose of handling personnel matters or disputes concerning fire code enforcement issues, and to appoint other boards or committees that commissioners deem necessary for carrying out the purposes and policies of this chapter.
- (9) To enforce the fire code and rules adopted by the state fire marshal pursuant to chapter 2, title 41, Idaho Code.
- (10) To charge and collect reasonable fees for services provided to residents of the fire protection district or city, in accordance with the provisions of sections 63-1311 and 63-1311A, Idaho Code. [1943, ch. 161, § 15, p. 324; am. 1965, ch. 19, § 1, p. 32; am. 1996, ch. 360, § 4, p. 1212; am. and redesign. 2006, ch. 318, § 14, p. 990.]

#### **STATUTORY NOTES**

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1415; in the introductory paragraph, inserted “discretionary” preceding “powers to manage” and substituted the last sentence for one which read: “Each fire protection district has

power.”; in subsection (2), substituted “chapter” for “act”; in subsection (3), added “and to approve the annual district budget by resolution of the board”; in subsection (5), inserted “and resolutions”; and added subsections (6) to (10).

**Compiler's Notes.** — Former § 31-1417 has been amended and redesignated as § 31-1419, pursuant to S.L. 2006, ch. 318, § 16.

### **31-1417A. [Amended and Redesignated.]**

#### **STATUTORY NOTES**

**Compiler's Notes.** — Former § 31-1417A has been amended and redesignated as § 31-1420, pursuant to S.L. 2006, ch. 318, § 17.

**31-1418. Temporary inability of commissioner.** — Whenever, for any reason, any member of the board of fire protection district commissioners submits to the board a signed written notice stating that the commissioner is temporarily unable to perform the duties of the office for a period of at least ninety (90) days, the other members of the board shall appoint a suitable person to perform such duties temporarily as an acting officer as provided herein, until the incumbent of the office shall be able to resume the performance of his duties, or a vacancy occurs in such office.

Each member of the board of a fire protection district shall designate two (2) temporary interim successors to his powers and duties and specify their order of succession. Each member shall review and, as necessary, revise the designations of temporary interim successors so there are always two (2) qualified temporary interim successors. The designation of a temporary interim successor shall become effective when the member making the designation files with the secretary of the board of the fire protection district the name, address and rank of the successors in order of succession.

When a member of the board of fire protection district commissioners is temporarily unable to perform the duties of office, the other members of the board shall appoint a temporary interim successor highest in order of succession who is available. The interim successor, except for the power and duty to appoint temporary interim successors, shall exercise the power and assume the duties of the member of the board of fire protection district commissioners. No person shall be designated or serve as a temporary interim successor unless he is qualified to hold the office of a member of the board of fire protection district commissioners, to whose powers and duties he is designated to succeed under the constitution and laws of the state of Idaho. The order of appointment of a temporary interim successor shall be recorded in the official proceedings of the board. [I.C., § 31-1416A, as added by 1986, ch. 317, § 1, p. 782; am. 2002, ch. 119, § 1, p. 334; am. and redesign. 2006, ch. 318, § 15, p. 990.]

#### **STATUTORY NOTES**

**Prior Laws.** — Former § 31-1418, which comprised 1943, ch. 161, § 18, p. 324; am. 1981, ch. 113, § 1, p. 169; am. 2003, ch. 196, § 1, p. 525, was repealed by S.L. 2006, ch. 318, § 18.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1416A.

**31-1419. Fire protection district has legal title to property.** — The legal title to all property acquired under the provisions of this chapter shall immediately and by operation of law, vest in such fire protection district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this chapter. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, possess, sell, convey and dispose of said property, whether real or personal, as in this chapter provided; and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this chapter or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorneys, and in the name of such fire protection district. [1943, ch. 161, § 17, p. 324; am. 1965, ch. 19, § 2, p. 32; am. and redesign. 2006, ch. 318, § 16, p. 990.]

STATUTORY NOTES

**Prior Laws.** — Former § 31-1419, which comprised 1943, ch. 161, § 19, p. 324, was repealed by S.L. 1989, ch. 232, § 1, effective January 1, 1990.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1417 and substituted “chapter” for “act” throughout the section.

**Compiler’s Notes.** — The words “this act” refer to S.L. 1943, ch. 161, §§ 1 — 36, compiled as §§ 31-1401 — 31-1410, 31-1411, 31-1412 — 31-1417, 31-1418 — 31-1423, 31-1425 — 31-1430, 31-1431 — 31-1436.

**31-1419A. [Amended and Redesignated.]**

STATUTORY NOTES

**Compiler’s Notes.** — Former § 31-1419A has been amended and redesignated as § 31-1422, pursuant to S.L. 2006, ch. 318, § 20.

**31-1420. Procedure for sale, conveyance and disposition of property.** — Real or personal property of a fire protection district may be sold, conveyed, and disposed of by its board of commissioners whenever the board finds and by resolution declares that the district no longer has use therefor, subject to the following procedure:

(1) If in the opinion of the board, any such personal property does not exceed ten thousand dollars (\$10,000) in value, the same may be sold without independent appraisal, notice, or competitive bids.

(2) All such real property, and any such personal property that the board determines to exceed ten thousand dollars (\$10,000) in value, shall be appraised by a certified appraiser who shall be selected by the board. It may then be sold at public or private sale to the highest bidder for cash at not less than its appraised value, after due notice. If the property cannot be sold for the appraised value after reasonable efforts have been made, the board may then sell the property for adequate and valuable consideration as determined by the board.



(3) Due notice of sale shall be accomplished if the notice shall describe the property to be sold (legal description, if real property), state the appraised value thereof (by separate items, if so appraised), and specify the time, place, and conditions of sale.

(4) Said notice shall be published in a newspaper having general circulation in the district at least twice, the first publication thereof to be not less than fifteen (15) days preceding the day of sale.

(5) If such property is sold on terms, the board may contract for the sale of the same for a period of years not exceeding ten (10) years, with an annual rate of interest on all deferred payments not to exceed twelve percent (12%) per annum. The title to all property sold on contract shall be retained in the name of the district until full payment has been made by the purchaser. Any property sold by the board under the provisions of this section, either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held a record title to the property so sold. The board shall have authority to cancel any contract of sale, pursuant to law, if the purchaser shall fail to comply with any of the terms of such contract, and retain all payments paid thereon. The board may by agreement with the purchaser modify or extend any of the terms of any contracts of sale, but the total period of years shall not exceed ten (10) years.

(6) Upon final payment pursuant to the sale of such real property, the president and secretary, pursuant to resolution of the board, shall duly execute and deliver an appropriate deed to the purchaser, and upon the accomplishment of the sale of such personal property, the president and secretary, pursuant to resolution of the board, shall duly execute and deliver an appropriate bill of sale to the purchaser.

(7) In addition to any other powers granted by law, the board of fire commissioners may, at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision, or taxing district of the state of Idaho, with or without compensation, any real or personal property or any interest in such property owned by the fire district or acquired by tax deed, after adoption of a resolution that the grant or exchange of property is in the public interest. Such resolution may be made at any regularly or specially scheduled meeting of the board. Notice of such grant or exchange shall be made in the same manner as set forth in subsections (3) and (4) of this section. The fire protection district's execution and delivery of the deed conveying an interest in the property shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the fire protection district and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance. [I.C., § 31-1417A, as added by 1965, ch. 52, § 1, p. 84; am. 2000, ch. 337, § 1, p. 1130; am. and redesign. 2006, ch. 318, § 17, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, 1417A and redesignated the subsections; in by ch. 318, renumbered the section from § 31- subsection (1), substituted “ten thousand dol-

lars (\$10,000)" for "five thousand dollars (\$5,000)"; in subsection (2), substituted "that the board determines to exceed ten thousand dollars (\$10,000)" for "exceeding five thousand dollars (\$5,000)" and "a certified appraiser" for "three (3) disinterested residents of the county in which the district is located," and added the last sentence; in subsection (4), substituted "fifteen (15) days" for "ten (10)

days"; in subsection (5), substituted "twelve percent (12%)" for "six percent (6%)"; and added subsection (7).

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

Former § 31-1420 has been amended and redesignated as § 31-1423, pursuant to S.L. 2006, ch. 318, § 21.

### **31-1420A. Special levy conditions — Authorization [Null and void.]**

#### **STATUTORY NOTES**

**Compiler's Notes.** — Section 2 of S.L. 1997, ch. 384 provided that this section, which comprised S.L. 1997, ch. 384, § 1, p.

1239, should be null, void and of no force and effect on and after July 1, 1999.

### **31-1421. Compensation and benefits — Expenses — Liability. —**

(1) Fire district commissioners may receive reasonable compensation for their services as commissioners. The fire protection board shall fix commissioner benefits and compensation for the fiscal year. Compensation for performing district business shall not exceed seventy-five dollars (\$75.00) per day. District business shall include time spent preparing for and attending regular and special board meetings and meetings of committees established by the board. Additional compensation, if approved by a majority of the fire protection board, may be calculated for commissioners who attend county or state agency meetings, educational classes, seminars, and other miscellaneous district business. Commissioners may also participate in the district's employee benefit package in the same manner as employees or volunteers. Any proposed commissioner benefits and annual compensation shall be published as a separate line item in the annual budget of the fire protection district.

(2) Actual expenses of commissioners for travel, and other district expenses approved by the board, shall be paid to the commissioners in addition to their annual compensation and benefits. The payment for expenses shall be paid from the funds of the fire protection district on either a per diem basis or upon the presentation of itemized receipts to the treasurer.

(3) The board shall fix the annual compensation and benefits to be paid to the other officers, agents and employees of the fire district, which shall be paid out of the treasury of the fire district.

(4) The district shall be liable and responsible for the actions and omissions of the commissioners, officers, agents and employees of the district, when the commissioners, officers, agents and employees are performing their duties within the course and scope of their employment with the district, and on behalf of the district. [I.C., § 31-1421, as added by 2006, ch. 318, § 19, p. 990.]

## STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1421 has been amended and redesignated as § 31-1424, pursuant to S.L. 2006, ch. 318, § 22.

**31-1422. Budget and hearing — Notice of hearing — Public inspection.** — (1) The fire protection district board shall adopt a budget and shall cause a public hearing to be held upon such budget, prior to certifying a tax levy to the board of county commissioners of each county within the district, or having a portion of its territory within the district.

(2) Notice of the budget hearing meeting shall be posted at least ten (10) full days prior to the date of said meeting in at least one (1) conspicuous place in each fire protection district to be determined by the board; a copy of such notice shall also be published in a daily or weekly newspaper published within such district, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A full and complete copy of such proposed budget shall be published with and as a part of the publication of such notice of hearing.

(3) Such budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this section provided, at such place and during such business hours as the board may direct.

(4) A quorum of the board shall attend such hearing and explain the proposed budget and hear any and all objections thereto.

(5) The fiscal year of a fire protection district shall commence either on the first day of October of each calendar year, or on the first day of January of each calendar year, as established by resolution of the fire protection district board of commissioners. [I.C., § 31-1419A, as added by 1982, ch. 362, § 1, p. 912; am. 2005, ch. 26, § 1, p. 132; am. and redesign. 2006, ch. 318, § 20, p. 990.]

## STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1419A.

**Compiler's Notes.** — Former § 31-1422 has been amended and redesignated as § 31-1425, pursuant to S.L. 2006, ch. 318, § 23.

**31-1423. Levy.** — (1) Each year, immediately prior to the annual county levy of taxes, the board of commissioners of each fire protection district, organized and existing under this chapter, may levy a tax upon all the taxable property within the boundaries of such district sufficient to defray the cost of equipping and maintaining the district of twenty-four hundredths percent (.24%) of market value for assessment purposes, to be used for the purposes of this chapter and for no other purpose. The levy shall be made by resolution entered upon the minutes of the board of commissioners of the fire protection district, and it shall be the duty of the secretary of the district, immediately after entry of the resolution in the minutes, to transmit to the county auditor, county assessor and state board of equalization certified copies of the resolution providing for such levy. Said taxes shall



be collected as provided by section 63-812, Idaho Code.

(2) If two (2) or more fire protection districts consolidate into one (1) district, the provisions of section 63-802, Idaho Code, shall apply to the consolidated district's budget request as if the former district which, in the year of the consolidation, has the higher levy subject to the limitations of section 63-802, Idaho Code, had annexed the other district or districts. In addition, the consolidated district shall receive the benefit of foregone increases accumulated by the former districts under section 63-802(1)(a), Idaho Code. [1943, ch. 161, § 20, p. 324; am. 1947, ch. 219, § 1, p. 525; am. 1965, ch. 119, § 1, p. 237; am. 1984, ch. 202, § 4, p. 493; am. 1988, ch. 316, § 1, p. 974; am. 1996, ch. 208, § 4, p. 658; am. 1996, ch. 322, § 10, p. 1029; am. 1997, ch. 117, § 1, p. 298; am. 1999, ch. 288, § 1, p. 714; am. 2002, ch. 172, § 1, p. 505; am. 2005, ch. 178, § 2, p. 549; am. and redesisg. 2006, ch. 318, § 21, p. 990.]

### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1420 and substituted “chapter” for “act” twice in subsection (1).

**Compiler's Notes.** — Former § 31-1423 has been amended and redesignated as § 31-1426, pursuant to S.L. 2006, ch. 318, § 24.

**Effective Dates.** — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be effective July 1, 1996. Approved March 12, 1996.

Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1-40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1999, ch. 288 declared an emergency retroactively to January 1, 1999 and approved March 24, 1999.

Section 2 of S.L. 2002, ch. 172 declared an emergency retroactively to January 1, 2002 and approved March 21, 2002.

Section 3 of S.L. 2005, ch. 178 declared an emergency retroactively to January 1, 2005 and approved March 28, 2005.

**31-1424. Duties of county commissioners.** — The board of county commissioners, at the time of making the annual county levies, shall make a levy upon all the taxable property not exempt from taxation within each district within the county in the same amount as the levy made by the board of commissioners of each fire protection district, and shall certify such levy or levies to the county auditor, and said auditor shall extend such levy on the rolls of the county, as other county taxes are extended; such special taxes so levied, as aforesaid, shall constitute a lien upon the property so assessed and shall be due and payable at the same time and in all respects are to be collected in the same manner as the state and county taxes, except that the tax collector must keep a separate list thereof and must list said tax in his receipt to the taxpayers and must pay to the county treasurer as he pays other taxes, specify to the treasurer what taxes they are and take a separate receipt therefor, and keep separate accounts thereof. [1943, ch. 161, § 21, p. 324; am. 1947, ch. 219, § 2, p. 525; am. 1984, ch. 202, § 5, p. 493; am. and redesisg. 2006, ch. 318, § 22, p. 990.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-1424 which comprised S.L. 1978, ch. 336, § 3, p. 867; am.

S.L. 1980, ch. 350, § 7, p. 887; am. S.L. 1993, ch. 362, § 1, p. 1322, was repealed by S.L.

1993, ch. 362, § 2, effective April 1, 1995.

Another former § 31-1424 which comprised S.L. 1943, ch. 161, § 24, p. 324, was repealed by S.L. 1978, ch. 336, § 2.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1421.

**Compiler's Notes.** — Section 3 of S.L. 1947, ch. 219, read: "The validity of any provision or part of this act shall not be

dependent upon any other provision or part thereof. If any provision or part thereof should for any reason be held unconstitutional or invalid such decision shall not affect the validity of any of the remaining provisions or parts of this act."

Former § 31-1424 has been amended and redesignated as § 31-1427 pursuant to S.L. 2006, ch. 318, § 25.

## 31-1424A. [Amended and Redesignated.]

### STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1424A has been amended and redesignated as § 31-1428, pursuant to S.L. 2006, ch. 318, § 26.

**31-1425. Exemptions.** — (1) All public utilities, as defined in section 61-129, Idaho Code, shall be exempt from taxation under the provisions of this chapter and shall not be entitled to the privileges or protection hereby provided without their consent in writing filed with the clerk of the board of county commissioners. Provided however, the board of fire protection commissioners, may enter into an agreement with a public utility for the purpose of affording the privileges or protection provided by the fire protection district to all, or such portion, of the property of the public utility as may be agreed upon between the parties and upon such terms and conditions as may be mutually agreed upon between the parties to the agreement.

(2) The board of county commissioners, upon application and recommendation of the board of fire protection commissioners, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(b), Idaho Code, as if the ordinance were making a zoning district boundary change. [1943, ch. 161, § 22, p. 324; am. 1985, ch. 153, § 1, p. 410; am. 1996, ch. 105, § 1, p. 407; am. and redesig. 2006, ch. 318, § 23, p. 990.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-1425, which comprised 1943, ch. 161, § 25, p. 324, was repealed by S.L. 2006, ch. 318, § 27.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-

1422 and substituted "chapter" for "act" in the first sentence of subsection (1).

**Effective Dates.** — Section 2 of S.L. 1985, ch. 153 declared an emergency. Approved March 21, 1985.

**31-1426. Handling of district funds.** — (1) The tax receipts collected by the county as provided for in section 31-1424, Idaho Code, and other funds shall immediately be paid over by the county treasurer to the treasurer of the fire protection district, who shall deposit the same in a bank and be handled in the manner prescribed by the state depository law and all other funds received, by or on behalf of the district, shall be deposited by the treasurer to the credit of the district fund and shall be drawn only upon voucher and by check bearing the signature of the treasurer and at least one (1) commissioner, or in the event that the treasurer is unavailable, checks may be signed by two (2) commissioners. Provided however, upon written resolution of the board, checks may be signed by designated representatives who have been bonded in amounts deemed appropriate by the board.

(2) It is hereby made the duty of the treasurer of the fire protection district to keep account of the district's funds; to place to the credit of the district all moneys received by him from the collector of taxes or from any other officer charged with the collection of taxes as the proceeds of taxes levied by the fire protection board, or from any other sources, and of all other moneys belonging to the district and to pay over all moneys belonging to the district on legally drawn warrants or orders of the district officers entitled to draw the same.

(3) No checks or warrants shall be signed until it is determined that the payment has been legally authorized, that the money has been duly appropriated by the board, and that such appropriation has not been exhausted. No checks or warrants shall be drawn in excess of the moneys actually in the district treasury. Provided however, warrants may be issued in anticipation of a levy except as otherwise provided in this chapter. The district shall pay warrants presented for payment provided there is money in the treasury for that purpose.

(4) All warrants for the payment of an indebtedness of a fire protection district which are unpaid due to lack of funds shall bear interest at a rate to be fixed by the fire protection board from the date of the registering of such unpaid warrants with the treasurer. Provided however, that the dollar amount of the warrants shall not exceed the revenue provided for the year in which the indebtedness was incurred. [1943, ch. 161, § 23, p. 324; am. 1996, ch. 360, § 6, p. 1212; am. and redesign. 2006, ch. 318, § 24, p. 990.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-1426, which comprised 1943, ch. 161, § 26, p. 324, was repealed by S.L. 2006, ch. 318, § 27.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from § 31-1423 and added the subsection (1) designation and therein substituted "The tax receipts collected by the county as provided for in section

31-1424, Idaho Code, and other funds" for "Such funds" and "and at least one (1) commissioner, or in the event that the treasurer is unavailable, checks may be signed by two (2) commissioners. Provided however, upon written resolution" for "and countersigned by the president of such district, or upon resolution"; and added subsections (2) to (4).

**31-1427. Indebtedness prohibited — Exceptions.** — The board of commissioners of a fire protection district organized pursuant to the provisions of this chapter shall have no power to incur any debt or liability,



except to the extent for the purposes and in the manner hereinafter provided:

(1) In the first year after organization, the board of a district may, for the purpose of organization, to finance general preliminary expenses of the district or for any other purpose of the fire protection district law, and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to one cent (\$.01) on each one hundred dollars (\$100) of market value for assessment purposes of all real and personal property within the district.

(2) Whenever the board of commissioners of a fire protection district shall determine that the interest of said district and the public interest or necessity require incurring an indebtedness exceeding the income and revenue provided for the year for the purposes of (a) acquiring, purchasing, constructing, improving and equipping lands, building sites and buildings together with the necessary appurtenant facilities and equipment and (b) acquiring and purchasing suitable equipment and apparatus necessary to provide fire protection, the board shall have the power and authority as hereinafter provided to issue general obligation coupon bonds not to exceed in the aggregate at any time two percent (2%) of market value for assessment purposes of the real and personal property in said district.

Whenever the board of a district shall deem it advisable to issue general obligation coupon bonds, the board shall provide for the issuance of such bonds by ordinance which shall specify and set forth all the purposes, objects and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to (a) constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting said bonded indebtedness and (b) to pay the interest on such proposed bonds as it falls due.

The aforesaid ordinance shall also provide for holding an election, notice of which shall be given for thirty (30) days in a newspaper or newspapers of general circulation in the district. The election shall be conducted in the manner and form, the returns canvassed, and the qualifications of electors of the district voting or offering to vote shall be determined, as provided by the pertinent and applicable provisions of title 34, Idaho Code. The voting at such election must be by ballot and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of ..... dollars for the purpose stated in Ordinance No. ...." and "Against issuing bonds to the amount of ..... dollars for the purpose stated in Ordinance No. ...." If at such election two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purposes, objects, and things provided in said Ordinance No. ...., such bonds shall be issued in the manner provided by chapter 2, title 57, Idaho Code, the municipal bond law of the state of Idaho.

Bonds issued pursuant to the provisions of this section and the income therefrom shall be exempt from taxation except transfer and estate taxes. [I.C., § 31-1424, as added by 1993, ch. 362, § 3, p. 1322; am. and redesign. 2006, ch. 318, § 25, p. 990.]

STATUTORY NOTES

**Prior Laws.** — Former § 31-1427, which comprised 1943, ch. 161, § 27, p. 324, was repealed by S.L. 2006, ch. 318, § 27.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1424 and redesignated the subsections.

**Effective Dates.** — Section 4 of S.L. 1993,

ch. 362 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after April 1, 1995.” Approved April 1, 1993.

**31-1428. Carry over — Fund balance.** — The board of commissioners of a fire protection district may accumulate fund balances at the end of a fiscal year and carry over those fund balances into the ensuing fiscal year budget for equipping and maintaining the district. A “fund balance” is the excess of the assets of a fund over its liabilities and reserves. [I.C., § 31-1424A, as added by 1993, ch. 329, § 1, p. 1228; am. and redesign. 2006, ch. 318, § 26, p. 990.]

STATUTORY NOTES

**Prior Laws.** — Former § 31-1428, which comprised 1943, ch. 161, § 28, p. 324; am. 1996, ch. 360, § 7, p. 1212; am. 1997, ch. 372, § 3, p. 1185, was repealed by S.L. 2006, ch. 318, § 27.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1424A.

**31-1429. Inclusion, annexation or withdrawal of area in cities.** — Except as otherwise provided in section 50-224, Idaho Code, any area embraced within the limits of any city may, with the consent of the governing boards of such city and the respective fire protection district, expressed by ordinance or resolution, be included within the limits of a fire protection district, when formed, or be subsequently annexed thereto. Any area in any city embraced within the limits of a fire protection district, shall, upon the consent of the governing boards of such city and fire protection district, expressed by ordinance or resolution, be withdrawn from such fire district. [1943, ch. 161, § 29, p. 324; am. 1949, ch. 82, § 1, p. 144; am. 1984, ch. 202, § 6, p. 493; am. 1996, ch. 360, § 8, p. 1212; am. 2006, ch. 318, § 28, p. 990.]

STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, added the exception in the beginning, substituted “governing boards of such city and the respective fire protection district” for “governing board thereof” in the first sentence, and substituted “governing boards of

such city and fire protection district” for “governing boards thereof” in the second sentence.

**Effective Dates.** — Section 2 of S.L. 1949, ch. 82 declared an emergency. Approved February 22, 1949.

**31-1430. Cooperation and reciprocating use of firefighting forces and apparatus of districts and cities.** — Fire protection districts shall have all of the powers given to political subdivisions of the state of Idaho as set forth in section 67-2339, Idaho Code, and sections 67-2326 through 67-2333, Idaho Code, inclusive, to enter into intra-agency and mutual aid

agreements with other political subdivisions and municipalities in Idaho, and in other states, for the purposes of protecting life and property against loss by fire and for all other purposes of this chapter. Any fire protection district or city fire department extinguishing a fire or responding to a call for emergency assistance to persons or property not situated within the taxing authority of the fire district or city fire department, is authorized to charge a reasonable fee for the services provided and shall have a lien upon property serviced, which lien shall be filed of record against the property in the name of the district or city in the time and manner provided by section 45-507, Idaho Code, for liens of original contractors. Fire districts and cities are also authorized to charge reasonable fees for services provided to residents located within the fire district or city in accordance with the requirements and procedures contained in sections 63-1311 and 63-1311A, Idaho Code, and shall have a lien upon the property serviced as provided in this section. [I.C., § 31-1430, as added by 2006, ch. 318, § 29, p. 990.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-1430, which comprised 1943, ch. 161, § 30, p. 324; am. 1984, ch. 202, § 7, p. 493, was repealed by S.L. 2006, ch. 318, § 27.

### **31-1430A. Cooperation between fire protection districts in Idaho and fire protection districts and municipalities of other states. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised I.C., § 31-1430A, as added by 1953, ch. 152, § 1, p. 247; am. 1977, ch. 166, § 1, p. 430; am. 1981, ch. 296, § 1, p. 616; am. 1985, ch. 178, § 3, p. 459; am. 1992, ch. 114, § 1, p. 343, was repealed by S.L. 2006, ch. 318, § 30.

### **31-1430B. [Amended and Redesignated.]**

#### STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1430B has been amended and redesignated as § 31-1431, pursuant to S.L. 2006, ch. 318, § 31.

**31-1431. Contracts between fire protection districts and individual property owners outside of district.** — Fire protection districts subject to the conditions hereinafter set forth may, pursuant to the discretion of the fire protection board, contract with individual property owners whose property is situated outside of the external boundaries of the fire protection district within the state of Idaho or within any neighboring state to provide for the same measure of fire protection to such contracting property owner as is provided to property owners within the boundaries of such contracting fire protection districts. All such contracts shall be for a term of one (1) year and shall commence at 12:01 a.m. on January 1 of such year and expire at 12 midnight on December 31 of such year. Contracts shall



provide for a monetary consideration to be paid in advance by such property owner and the monetary consideration shall be based upon the cost of providing such service to such property owner, including, but not limited to, covering the district's administrative and contract preparation costs, including legal fees for preparation and review of the contracts, and shall also take into consideration the distance between such property and the fire station or other facility wherein the firefighting equipment of such fire protection district is kept. Monetary consideration shall in no event be less than the amount that would have been paid in taxes that would have been levied and assessed under the provisions of this chapter, if such property had been included within the boundaries of said fire protection district. The power herein granted is subject to the limitation that no such contract may be entered into with any property owner whose house and outbuildings are situate further distant from the firehouse or other facility wherein such district's fire protection equipment is kept than the point on the external boundary of such district that is furthest distant from the firehouse or other facility wherein such district's fire protection equipment is kept. Provided further, however, that all of the contiguous lands of any contracting property owner must be included in said contract unless a portion of such property owner's lands are further distant from the firehouse where such district's firefighting equipment is kept than the point on the external boundary of such fire protection district that is furthest distant from the firehouse, in which case such portion of said lands must be excluded. For the purpose of determining value of eligible property situate outside the state of Idaho, the board of commissioners of such fire protection district shall determine as nearly as possible what the assessed value of such lands outside the state of Idaho would be if the same were situate within the state of Idaho. [I.C., § 31-1430B, as added by 1973, ch. 54, § 1, p. 88; am. and redesisg. 2006, ch. 318, § 31, p. 990.] •

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1430B; in the first sentence, substituted “may, pursuant to the discretion of the fire protection board” for “are hereby authorized to”; in the third sentence, deleted “provided to be paid therein” following “and the monetary consideration,” and inserted “including, but not limited to, covering the district’s adminis-

trative and contract preparation costs, including legal fees for preparation and review of the contracts” and “also” preceding “take into consideration”; and in the fourth sentence, substituted “chapter” for “act.”

**Compiler’s Notes.** — Former § 31-1431 has been amended and redesignated as § 31-1432, pursuant to S.L. 2006, ch. 318, § 32.

**31-1432. Construction of chapter.** — The provisions of this chapter shall be liberally construed to effect the purposes thereof. [1943, ch. 161, § 31, p. 324; am. and redesisg. 2006, ch. 318, § 32, p. 990.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-1432, which comprised 1943, ch. 161, § 32, p. 324; am. 1986, ch. 137, § 8, p. 367, was repealed by

S.L. 2006, ch. 318, § 33.

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from

§ 31-1431; substituted "chapter" for "act" in the section heading; and substituted "chapter" for "act" in the section text.

**31-1433. Continuation of existing districts — Validating acts of officers.** — Nothing in this chapter shall be construed as impairing the legality or organization of any fire protection district heretofore organized pursuant to law, nor the legality of any act of such district done in accordance with the prior law, nor shall it be deemed to affect the legality of the election of any officer of any such existing fire protection district, and all directors and officers duly elected, qualified and holding office at the time of the taking effect of this chapter, shall continue to serve in such office until the expiration of their present terms; provided, however, that such fire protection districts as have existed heretofore shall comply with the provisions of this chapter as soon as they can conveniently do so and thereafter be governed by the provisions of this chapter. Nor shall anything in this chapter be deemed in any way to affect the existing indebtedness of any fire protection district created under and by virtue of the provisions of chapter 3, title 30, Idaho Code. All such existing fire protection districts, and the lawful acts of their officers and agents, are hereby declared prima facie lawful as de facto fire protection districts; provided, however, that such districts shall comply with the provisions of this chapter as soon as they can conveniently do so and thereafter be governed by the provisions of this chapter. [1943, ch. 161, § 34, p. 324; am. 1980, ch. 197, § 26, p. 433; am. and redesign. 2006, ch. 318, § 34, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from 31-1434 and substituted "chapter" for "act" throughout the section.

**Effective Dates.** — Section 34 of S.L.

1980, ch. 197 read: "(1) Section 1 and sections 3 through 33 of this act shall be in full force and effect on and after July 1, 1980.

"(2) Section 2 of this act shall be in full force and effect on and after July 1, 1981."

**31-1434. Any dissolution.** — Dissolution of any fire protection district organized under this chapter may be initiated by a petition signed by at least twenty-five percent (25%) of the holders of title, or evidence of title, to the real property within the fire protection district, requesting dissolution of such fire protection district, in the following manner:

The petition shall first be presented to the board of county commissioners of each county in which the fire protection district is situated, signed by the number of holders of title or evidence of title above provided, which petition shall clearly designate the boundaries of the fire protection district and shall state the name of the district and shall be accompanied by a map thereof. The petition, together with all maps and other papers filed therewith, shall, at proper hours, be open to public inspection in the office of the clerk of the board of county commissioners between the date of their said filing and the date of the election on the question of districts as hereafter provided. The petition may be in one (1) or in several papers. When such petition is presented to the board of county commissioners, and filed in the office of the

clerk of the board, the said board shall set a time for hearing of such petition, which time shall not be less than four (4) nor more than six (6) weeks from the date of the presenting and filing of said petition. A notice of the time of such hearing shall be published by said board, once a week for three (3) successive weeks previous to the time set for such hearing, in a newspaper published within the county in which said district is situated. Said notice shall give the boundaries of the fire protection district and shall state that a petition has been filed to dissolve the same, and that on the date fixed for the hearing, any taxpayer within the district, may appear at the hearing and testify and/or present exhibits upon any issue pertaining to the proposed dissolution of the fire district, or may object to or support the proposed dissolution.

After hearing and considering any and all testimony and other evidence either made in favor of or in opposition to the dissolution of the fire district, if the board of county commissioners makes a sufficient factual finding that the majority of the residents of the fire district will receive no benefit by continuing the existence of the fire district, the county commissioners shall make an order granting the petition, with or without modification. Provided however, the board of county commissioners, after hearing and considering all testimony and other evidence either in favor of or in opposition to the dissolution of the fire district, cannot make a sufficient factual finding that the majority of the residents of the fire district will receive no benefit by continuing the existence of the fire district, the county commissioners shall make an order denying the petition. After the county commissioners have entered their order approving or denying such petition, the clerk of the board of county commissioners shall cause to be published, a notice of election to be held in such proposed fire protection district, for the purpose of determining whether or not the same shall be dissolved. Such notice shall plainly and clearly designate the boundaries of the fire protection district, its name, and further, that the election is to be held to decide the question of whether the fire protection district shall be maintained or dissolved. Such notice shall be published once in each week for three (3) successive publications prior to such election, in a newspaper published within the county aforesaid.

Such notice shall require the electors to cast ballots which shall contain the words "fire protection district dissolved .... yes" or: "fire protection district dissolved .... no" or words equivalent thereto. No person shall be entitled to vote at any election held under the provisions of this chapter, unless he shall possess all the qualifications required of electors under the general laws of the state and be a resident of the district.

The election qualifications of electors and canvass of the ballots shall be made in the same manner as provided for in sections 31-1406 and 31-1407, Idaho Code.

If a majority of the electors voting at such election shall vote to dissolve the fire protection district, the board of county commissioners shall, after certifying the results of such election, enter an order upon the minutes of its official proceedings dissolving said fire protection district, and such district shall thereupon be dissolved.



Provided, however, that whenever a petition requesting dissolution of a fire protection district is signed by the holders of title, or evidence of title, to all of the real property included within the fire protection district and is presented to the board of county commissioners of the county in which the fire protection district is situated, accompanied by a map clearly designating the boundaries of the district, the board of county commissioners shall set a time for hearing of such petition, which time shall not be less than four (4) nor more than six (6) weeks from the date of the presenting and filing of said petition. A notice of the time and place of such hearing shall be published by said board once a week for three (3) successive weeks previous to such hearing, in a newspaper published within the county in which the fire protection district is situated. Said notice shall give the boundaries of the fire protection district and shall state that a petition has been filed to dissolve the same, and that on the date fixed for the hearing, any resident, taxpayer, or creditor of such fire protection district may appear and offer any objection to the dissolving of the fire protection district. If at such hearing, no protests are made to the granting of the petition, the board of county commissioners shall enter an order upon the minutes of its official proceedings dissolving such fire protection district, and such district shall thereupon be dissolved. If, however, any protests from residents, taxpayers, or creditors of the district are entered at such hearing, the board of county commissioners shall, within thirty (30) days of said hearing, determine whether or not such fire protection district shall be dissolved and shall cause an order to that effect to be entered upon the minutes of its official proceedings. If the board determines that the fire protection district shall be dissolved, such dissolution shall be effective as of the date of the entry of such order upon the minutes.

The property of such district shall remain the property of the county in which such district is located and any money remaining in the fund of such district shall be expended in the maintenance and repair of the highways of such district whether such highways at the time of the dissolution, are in the incorporated territory or in unincorporated territory.

If the district is situated in two (2) or more counties, each board of county commissioners shall coordinate the hearing date and the publications of notice so that only one (1) hearing need be held. Unless otherwise agreed to by each board of county commissioners involved, the hearing shall be held at the administrative offices of the district, and the boards of county commissioners are hereby specifically authorized to act in a joint manner for such purposes. If an election is called, the boards of county commissioners shall provide that the election be held on the same day in each county, and the boards of county commissioners shall coordinate the canvass of the votes cast and make one (1) joint announcement. If a majority of votes in any county are against the dissolution of the district, such rejection shall void the dissolution of the district in all counties. [1943, ch. 161, § 35, p. 324; am. 1945, ch. 115, § 1, p. 177; am. 1949, ch. 154, § 1, p. 330; am. 1974, ch. 52, § 1, p. 1112; am. 1980, ch. 350, § 8, p. 887; am. 1986, ch. 137, § 9, p. 367; am. and redesisg. 2006, ch. 318, § 35, p. 990.]

## STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from 31-1435; in the introductory paragraph, deleted “by twenty-five (25) or more of the holders of title, or evidence of title to real property within the fire protection district aggregating not less than one thousand (1,000) acres of contiguous territory, or consisting of contiguous territory of less extent, by having market value for assessment purposes of at least five hundred thousand dollars (\$500,000) at the last preceding county assessment, or by a petition signed” following “by a petition signed”; at the end of the second paragraph, substituted the language beginning “may appear at the hearing and testify and/or

present” for “may appear and offer any objection to the dissolving of such district”; substituted the first sentence of the third paragraph for one which read: “After hearing and considering any and all objections to the dissolving of said district, the county commissioners shall thereupon make an order either denying such petition or granting same, with or without modification”; and added the second sentence in the third paragraph.

**Compiler’s Notes.** — Former § 31-1434 has been amended and redesignated as § 31-1433, pursuant to S.L. 2006, ch. 318, § 34.

**Effective Dates.** — Section 2 of S.L. 1974, ch. 52 declared an emergency. Approved March 11, 1974.

**31-1435. Separability.** — The several parts and provisions of this chapter are hereby declared independent and severable and the invalidity of any part or feature thereof shall not affect, impair, or invalidate the remainder of said section, or any part thereof. [1943, ch. 161, § 36, p. 324; am. and redsig. 2006, ch. 318, § 36, p. 990.]

## STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered the section from 31-1436 and substituted “chapter” for “act.”

**Compiler’s Notes.** — Former § 31-1435 has been amended and redesignated as § 31-1434, pursuant to S.L. 2006, ch. 318, § 35.

**31-1436. Nonliability of agency for delay in report of fire — Exception.** — No person, corporation, partnership or association which is authorized by any city fire department, fire protection district or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit the report to the fire department, fire protection district or volunteer fire company, shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report the fire, unless the delay or failure is the result of the gross negligence of the person, corporation, partnership or association. [1955, ch. 188, § 1, p. 410; am. 1984, ch. 202, § 8, p. 493; am. and redsig. 2006, ch. 318, § 37, p. 990.]

## STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1437.

**Compiler’s Notes.** — Former § 31-1436 has been amended and redesignated as § 31-1435, pursuant to S.L. 2006, ch. 318, § 36.

**31-1437. Liability for indebtedness of fire protection districts after boundary changes.** — Territory withdrawn from any fire protection district shall continue to be subject to taxation for the payment of the principal of and interest on any indebtedness, whether evidenced by bonds, notes, or other similar evidences of indebtedness created by election

outstanding upon the effective date of withdrawal as fully as though the territory had not been withdrawn. For the purpose of discharging the indebtedness and interest thereon and other obligations, the territory shall be considered a part of the district the same as though not withdrawn. All provisions which could have been used to compel the payment by the withdrawn territory of its portion of the indebtedness and interest thereon had the withdrawal not occurred can be used to compel the payment on the part of the withdrawn territory of the portion for which it is liable. Provided, however, by mutual agreement, the entity annexing or withdrawing territory from the district may acquire the capital assets which represent the proceeds of the indebtedness and pay off or assume the indebtedness to the extent otherwise permitted by law and the terms of the underlying obligation. [I.C., § 31-1438, as added by 1989, ch. 133, § 1, p. 299; am. and redesign. 2006, ch. 318, § 38, p. 990.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 318, renumbered this section from § 31-1438.

**Compiler's Notes.** — Former § 31-1437 has been amended and redesignated as § 31-

1436, pursuant to S.L. 2006, ch. 318, § 37.

**Effective Dates.** — Section 2 of S.L. 1989, ch. 133 provided that the act would become effective October 1, 1989.

#### 31-1438. [Amended and Redesignated.]

#### STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1438 has been amended and redesignated as § 31-1437, pursuant to S.L. 2006, ch. 318, § 38.

### CHAPTER 15

#### COUNTY FINANCES AND CLAIMS AGAINST COUNTY

##### SECTION.

- 31-1501. Claims presented to be accompanied by receipts.
- 31-1502. Check list of bills allowed.
- 31-1503. Prohibitions on allowance of claims.
- 31-1504. Burial of county poor — Coroners released from liability.
- 31-1505. Partial allowance and reconsideration.
- 31-1506. Judicial review of board decisions.
- 31-1507. Procedures for redeeming registered warrants.

##### SECTION.

- 31-1508. Transfer of moneys — Order of payment.
- 31-1509. Accounting system.
- 31-1510. Definitions.
- 31-1511. Signatures required on warrants and method of payment.
- 31-1512. [Amended and Redesignated.]
- 31-1513 — 31-1518. [Repealed.]

**31-1501. Claims presented to be accompanied by receipts.** — The board of commissioners must not hear or consider any claim against the county unless accompanied by a receipt or documentation giving all items of the claim, duly certified by the authorized county official that the amount claimed is justly due or services were rendered. No claim shall be paid if not presented to the board within a year from the date the bill was generated.



[1869, § 12, p. 100; R.S., § 1773; reen. R.C. & C.L., § 1947; C.S., § 3506; am. 1923, ch. 153, § 1, p. 223; I.C.A., § 30-1105; am. 1973, ch. 288, § 1, p. 612; am. and redesi.g. 1995, ch. 61, § 6, p. 134.]

### STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1501 was amended and redesignated as § 31-1502 by § 7 of S.L. 1995, ch. 61.

This section was formerly compiled as § 31-1506.

**Effective Dates.** — Section 2 of S.L. 1973, ch. 288 provided that the act should take effect on and after July 1, 1973.

### JUDICIAL DECISIONS

#### ANALYSIS

Allowance of expenses.  
Allowance of illegal compensation.  
Allowance of money advanced.  
Apportionment of road taxes.  
Arbitration.  
"Claim against the county."  
Failure to comply.  
Limitations.  
Pleading.

#### Allowance of Expenses.

Accounts of county officer against county for expenses incurred in his official capacity and while on official business can be considered by board of county commissioners only as part of such officer's quarterly statement and can not be considered as an independent claim or account. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

#### Allowance of Illegal Compensation.

Order of board of county commissioners allowing one of their number compensation to which he is not entitled by law is void. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912).

#### Allowance of Money Advanced.

Where county was engaged in litigation and the necessity for the payment of a small amount of costs arose, and a member of board of commissioners advanced the required sum, allowance of the sum so advanced by board will not be reversed on appeal. *Osborn v. Ravenscraft*, 5 Idaho 612, 51 P. 618 (1897).

#### Apportionment of Road Taxes.

This section does not apply to municipality which claims twenty-five per cent of the road taxes collected against property situated within its corporate limits, and such percentage should be paid over by county without presentation of a claim therefor; it is immaterial that no such claim is made within a year after collection of tax by county. *Village of Mountainhome v. Elmore County*, 9 Idaho 410, 75 P. 65 (1904).

#### Arbitration.

A board of commissioners is forbidden to pay a claim asserted against it until certain procedures are followed under former § 31-1509, former § 31-1513 and this section; these statutes merely require a claim to be submitted to the commission before an aggrieved party can take further action and there is no reason why an aggrieved party cannot then submit his claim to arbitration rather than commencing a district court action. *Bingham County Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 665 P.2d 1046 (1983), *aff'd*, 108 Idaho 181, 697 P.2d 1195 (1985).

#### "Claim Against the County."

Words "claim against the county" apply only where there is something for commissioners to pass on, involving discretion on their part. *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

#### Failure to Comply.

The failure of an officer to properly itemize a claim or to furnish vouchers therewith is not a cause for the removal of the officer. *Corker v. Pence*, 12 Idaho 152, 85 P. 388 (1906).

#### Limitations.

Where party filed claim within year and brought suit within six months after its rejection, his action was not barred by any of the statutes of limitation. *Wilson v. Twin Falls County*, 47 Idaho 527, 277 P. 1114 (1929).

#### Pleading.

Complaint must allege ultimate facts showing compliance with statutory requirements.

Drainage Dist. No. 2 v. Ada County, 38 Idaho 778, 226 P. 290 (1924).

**Cited in:** Rankin v. Jauman, 4 Idaho 394, 39 P. 1111 (1895); Boise Valley Traction Co. v.

Ada County, 38 Idaho 350, 222 P. 1035 (1923); Guiles v. Kellar, 68 Idaho 400, 195 P.2d 367 (1948).

### RESEARCH REFERENCES

**Am. Jur.** — 56 Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 629 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 193-253.

**31-1502. Check list of bills allowed.** — The board must require their clerk to furnish them with a list of all bills and accounts of every nature, giving the name of each person in whose favor an account or bill has been allowed, with the amount allowed him and out of what fund the same is to be paid. The board must review the list and certify to its correctness. The county treasurer must pay no warrant that does not correspond with said list. [R.S., § 1766; reen. R.C. & C.L., § 1943; C.S., § 3502; I.C.A., § 30-1101; am. and redsig. 1995, ch. 61, § 7, p. 134.]

### STATUTORY NOTES

**Cross References.** — Accounts for county charges to be presented to county commissioners, § 31-3301.

County officers' salaries, allowance or audit not required, § 31-3101.

Prosecuting attorney to oppose claims and

accounts against county, § 31-2607.

**Compiler's Notes.** — Former § 31-1502 was amended and redesignated as § 31-1508 by § 13 of S.L. 1995, ch. 61.

This section was formerly compiled as § 31-1501.

### JUDICIAL DECISIONS

#### Warrants.

Warrants issued by county auditor which failed to specify the nature of the liability for which they were issued were void and a

subsequent ratification by the board of commissioners did not validate them. Bingham County v. First Nat'l Bank, 122 F. 16 (9th Cir. 1903).

### RESEARCH REFERENCES

**Am. Jur.** — 56 Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 629 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 193-253.

**A.L.R.** — Amount of damages stated in notice of claim against municipality or county

as limiting amount of recovery, 24 A.L.R.3d 965.

Validity of governmental borrowing or expenditure for purposes of acquiring, maintaining or improving stadium for use of professional athletic team, 67 A.L.R.3d 1186.

**31-1503. Prohibitions on allowance of claims.** — The board must not for any purpose contract debts or liabilities, except in pursuance of law. They must not allow any account of any county officer while he neglects or refuses to perform any duty required of him by law or is liable upon any official or other bond. [R.S., § 1771; modified by 1899, p. 405, § 4; compiled and reen. R.C. & C.L., § 1945; C.S., § 3504; I.C.A., § 30-1103; am. 1933, ch. 43, § 1, p. 57; am. 1995, ch. 61, § 8, p. 134.]

STATUTORY NOTES

**Cross References.** — Limitation on allowance of claims in excess of levies, § 31-2017.  
**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13

through 22 of this act shall be in full force and effect on and after March 9, 1995, and retroactively to January 1, 1995. Approved March 9, 1995.

JUDICIAL DECISIONS

ANALYSIS

Action to recover fees.  
 Application.  
 Conveyances to wife of commissioner.  
 Essentials of claim.  
 Passing on statutes.

**Action to Recover Fees.**

In action by officer against county to recover fees alleged to be due such officer, complaint must show that such officer is not in arrears as to public funds collected by him, and that his bill as presented to commissioners was itemized and verified. *Pease v. Kootenai County*, 7 Idaho 731, 65 P. 432 (1901).

**Application.**

In action by former assessor to recover unpaid salary and expenses, where county filed counterclaim against plaintiff to which he pleaded the statute of limitations, which was sustained, the contention of the county that, under the provisions of this section, it was prevented from paying plaintiff's claim, was held not applicable since this was an original action, and the prohibition referred to in this section does not apply. *Wonnacott v. Kootenai County*, 32 Idaho 342, 182 P. 353 (1919).

**Conveyances to Wife of Commissioner.**

Conveyance of county property to county commissioner's wife is absolutely void. *Clark*

*v. Utah Constr. Co.*, 51 Idaho 587, 8 P.2d 454 (1932).

**Essentials of Claim.**

One who demands payment of a claim against a county must show some constitutional or statutory authority therefor, or that it arises from some contract, express or implied, which finds authority in law. The payment of such claim can not be allowed upon the theory that the services performed were beneficial to the county. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

**Passing on Statutes.**

Board of county commissioners has no power to pass upon the constitutionality of a statute, in acting on claim presented to it. *Howell v. Board of County Comm'rs*, 6 Idaho 154, 53 P. 542 (1898).

**Cited in:** *Mombert v. Bannock County*, 9 Idaho 470, 75 P. 239 (1904); *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915).

RESEARCH REFERENCES

**A.L.R.** — Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 A.L.R.3d 965.

Validity of governmental borrowing or expenditure for purposes of acquiring, maintaining or improving stadium for use of professional athletic team, 67 A.L.R.3d 1186.

**31-1504. Burial of county poor — Coroners released from liability.** — Claims of county coroners for the burial of the county poor heretofore paid by the counties are hereby declared to be legal claims and the county coroners are hereby released from any liability to reimburse the counties for the payment of the same. [I.C.A., § 30-1104a, as added by 1937, ch. 115, § 1, p. 172; am. and redesiɡ. 1995, ch. 61, § 9, p. 134.]



### STATUTORY NOTES

**Prior Laws.** — Former § 31-1504, which comprised R.S., § 1772; reen. R.C. & C.L., § 1946; C.S., § 3505; I.C.A., § 30-1104; am. 1937, ch. 115, § 1, p. 172, was repealed by S.L. 1995, ch. 61, § 5, effective upon passage and approval, retroactive to January 1, 1995.

**Compiler's Notes.** — This section was formerly compiled as § 31-1505.

Section 2 of S.L. 1937, ch. 115, read: "If any provision of this act or the application thereof to any person or circumstance is held invalid,

the remainder of this act and the application of such provisions to other persons or circumstances, shall not be affected thereby."

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13 through 22 of this act shall be in full force and effect on and after March 9, 1995, and retroactively to January 1, 1995. Approved March 9, 1995.

**31-1505. Partial allowance and reconsideration.** — When the board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected. If they find it to be a proper county charge, but greater in amount than is justly due, the board may allow the claim in part and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment, the claim may be again considered at the next regular succeeding session of the board, but not afterward. [R.S., § 1775; reen. R.C. & C.L., § 1949; C.S., § 3508; I.C.A., § 30-1107; am. and redesign. 1995, ch. 61, § 10, p. 134.]

### STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1505 was amended and redesignated as § 31-1504 by § 9 of S.L. 1995, ch. 61.

This section was formerly compiled as § 31-1508.

### JUDICIAL DECISIONS

#### ANALYSIS

Acceptance of warrant.

Illegal allowances.

Partial payment.

Time limit for reconsideration.

#### Acceptance of Warrant.

Claimant can not accept county warrant for a portion of his claim allowed by commissioners and sue county for the balance, but must either acquiesce in the determination of board and accept the warrant in full settlement of his claim or refuse warrant and submit the whole claim to court. *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

Nor can claimant who accepts his warrant appeal from order of board disallowing his claim in full. *Ellis v. Bingham County*, 7 Idaho 86, 60 P. 79 (1900).

#### Illegal Allowances.

Where county commissioners illegally allow claim of county officer, and county money is

paid in settlement of such claim, county may sue to recover amount of such payment. *Ada County v. Gess*, 4 Idaho 611, 43 P. 71 (1895).

Claim of sheriff against county for serving subpoenas in some other county is an unnecessary expense, as subpoenas should be sent to sheriff of county where witness may be, and any allowance of such claim is wrongful and in violation of law. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

#### Partial Payment.

Under the provisions of this section, the board of commissioners does not have authority to issue a warrant for a claim that has been allowed in part unless the party to whom it is issued files a receipt in full for his claim. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

**Time Limit for Reconsideration.**

If an account presented to board of county commissioners is disallowed in part and claimant is unwilling to receive such amount in full payment, claim may again be consid-

ered at the next regular succeeding session of board, but not afterward. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

**Cited in:** *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894).

RESEARCH REFERENCES

**A.L.R.** — Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 A.L.R.3d 965.

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for

personal injury, 44 A.L.R.3d 1108.

Governmental tort liability for injuries caused by negligently released individual, 6 A.L.R.4th 1155.

Local government tort liability: minority as affecting notice of claim requirement. 58 A.L.R.4th 402.

**31-1506. Judicial review of board decisions.** — (1) Unless otherwise provided by law, judicial review of any act, order or proceeding of the board shall be initiated by any person aggrieved thereby within the same time and in the same manner as provided in chapter 52, title 67, Idaho Code, for judicial review of actions.

(2) Venue for judicial review of board actions shall be in the district court of the county governed by the board. [I.C., § 31-1509, as added by 1993, ch. 103, § 2, p. 262; am. 1994, ch. 241, § 1, p. 760; am. and redesig. 1995, ch. 61, § 11, p. 134.]

STATUTORY NOTES

**Cross References.** — Appeals from order revoking toll road, bridge, or ferry license, § 40-1406.

**Compiler's Notes.** — Former § 31-1506 was amended and redesignated as § 31-1501 by § 6 of S.L. 1995, ch. 61.

This section was formerly compiled as § 31-1509.

**Effective Dates.** — Section 3 of S.L. 1994, ch. 241 declared an emergency. Approved March 30, 1994.

JUDICIAL DECISIONS

**Board Action Required.**

There is no statute or constitutional authority under Idaho law allowing a judicial review of a personnel decision by a county officer. This section requires an action by the board of county commissioners before a judicial action

can commence. *Gibson v. Ada County*, — Idaho —, — P.3d —, 2006 Ida. LEXIS 12 (Feb. 9, 2006).

**Cited in:** *Gibson v. Ada County Sheriff's Dep't*, 139 Idaho 5, 72 P.3d 845 (2003).

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Alternative remedy.
- Appeal denied.
- Appeal from entire order.
- Appeal of zoning decision.
- Appealable orders.
- Arbitration.
- Bond.
- Burden of proof on appeal.
- Collateral actions.
- Allowed.
- Prohibited.

Compliance with notice requirement.  
 Contents of written notice.  
 Discretion of court.  
 Effect of appeal.  
 Failure to appeal.  
 Improper claims.  
 Necessity of undertaking.  
 Notice of appeal.  
 Pleadings not required.  
 Procedure on appeal.  
 Publication of commissioner's actions.  
 Remedy by appeal.  
 Right of appeal.  
 Statutory remedy.  
 Time for appeal.  
 When perfected.  
 Who may appeal.  
 Witnesses' fees.

### **Alternative Remedy.**

Owners through whose lands private road was opened need not appeal, but could refuse to accept award and compel condemnation proceedings by county. *Latah County v. Hasfurther*, 12 Idaho 797, 88 P. 433 (1907).

### **Appeal Denied.**

In a county's action to enjoin the obstruction of a road where the county board had entered an order abandoning land originally granted but not used, an assignment of error that the trial court's finding that subsequent rescission of order was not effective was held to present nothing for review, where it was contended that the board had power to rescind, and that the order could be set aside in no other way than by appeal as provided in former law, and where the reason why the order was not ineffectual was not specified. *Kootenai County v. Kinman*, 56 Idaho 1, 47 P.2d 887 (1935).

### **Appeal from Entire Order.**

Appeal would not lie from action of board of county commissioners in disallowing portion of claim against county, since claimant had to accept or reject action of board in its entirety. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

### **Appeal of Zoning Decision.**

The record contained substantial evidence supporting the district court's determination that the operation of the bar constituted a commercial use of the property which was an ungrandfathered, unpermitted use within the county's agricultural zoning district; this, in turn, supported the district court's ultimate conclusion that the bar could not receive a county beer license since it was in violation of the county's zoning ordinance; because the district court's findings and conclusions were supported by substantial evidence, the decision below was affirmed. *Fox v. Board of*

*County Comm'rs*, 121 Idaho 686, 827 P.2d 699 (Ct. App. 1991).

### **Appealable Orders.**

The following orders were appealable under former law:

Discretionary orders. *Meller v. Board of Comm'rs*, 4 Idaho 44, 35 P. 712 (1894).

An order for the issuance and sale of funding bonds. *Mason v. Lieuallen*, 4 Idaho 415, 39 P. 1117 (1895).

An order allowing a claim for printing the delinquent tax list. *Jolly v. Woodward*, 4 Idaho 496, 42 P. 512 (1895).

An order fixing the salaries of county officers. *Reynolds v. Board of County Comm'rs*, 6 Idaho 787, 59 P. 730 (1899); *Williams v. Board of County Comm'rs*, 48 Idaho 462, 282 P. 867 (1929).

An order opening a private road. *Latah County v. Hasfurther*, 12 Idaho 797, 88 P. 433 (1907).

An order incorporating a village. *Gardner v. Blaine County*, 15 Idaho 698, 99 P. 826 (1909); *Village of Ilo v. Ramey*, 18 Idaho 642, 112 P. 126 (1910).

An order for a special election. *O'Conner v. Board of County Comm'rs*, 17 Idaho 346, 105 P. 560 (1909).

An order making a levy of taxes. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911).

Action upon an appeal from action of good road commissioners. *Feltham v. Board of County Comm'rs*, 28 Idaho 269, 153 P. 562 (1915).

Orders of boards of county commissioners relating to school questions. *Rural High School Dist. No. 1 v. School Dist. No. 37*, 32 Idaho 325, 182 P. 859 (1919).

Order of the board of county commissioners sitting as board of equalization. *First Nat'l Bank v. Board of County Comm'rs*, 40 Idaho 391, 232 P. 905 (1925).

A close reading of former law disclosed no



language explicitly limiting former law to appeals from the Board of County Commissioners' decisions on county finances and claims against the county. *Fox v. Board of County Comm'rs*, 114 Idaho 940, 763 P.2d 313 (Ct. App. 1988).

Appeal could be taken to district court or judge thereof, and such appeal could be tried either by court or judge. *Village of Ilo v. Ramey*, 18 Idaho 642, 112 P. 126 (1910).

#### **Arbitration.**

The board of commissioners was forbidden to pay a claim asserted against it until certain procedures were followed under §§ 31-1506, former 31-1513 and a former version of this section; these statutes merely required a claim to be submitted to the commission before an aggrieved party could take further action and there was no reason why an aggrieved party could not then submit his claim to arbitration rather than commencing a district court action. *Bingham County Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 665 P.2d 1046 (1983), *aff'd*, 108 Idaho 181, 697 P.2d 1195 (1985).

The arbitration power of a county did not conflict with the right of a taxpayer to appeal claims paid by a county, because a taxpayer had that right only if a claim is allowed. *Bingham County Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 665 P.2d 1046 (1983), *aff'd*, 108 Idaho 181, 697 P.2d 1195 (1985).

#### **Bond.**

Failure to give undertaking on appeal from order of board of county commissioners was fatal. *Foresman v. Board of County Comm'rs*, 11 Idaho 11, 80 P. 1131 (1905).

#### **Burden of Proof on Appeal.**

On an appeal from an order of the board of county commissioners allowing watermaster's claim for compensation, the watermaster had the burden of showing that sufficient water was not available for all users and that therefore his services were necessary, and the burden did not shift to water users to show the contrary. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

#### **Collateral Actions.**

##### **—Allowed.**

Fact that appeal could be taken from order of commissioners allowing the account of county officer did not preclude maintenance of a suit by county to recover amount of account if same was illegally allowed. *Ada County v. Gess*, 4 Idaho 611, 43 P. 71 (1895).

Former law and § 12-607 (repealed) provided an adequate remedy at law and an equitable action could not be maintained to cancel county warrants alleged to have been illegally issued. *County of Ada v. Bullen Bridge Co.*, 5 Idaho 79, 47 P. 818 (1896).

Remedy to correct errors and irregularities in action of board of commissioners acting in a matter over which such board had jurisdiction was solely by appeal. Where board, in violation of the Constitution, incurred a large debt in excess of the revenues for the fiscal year, without submitting such question to voters, such board was not acting within its jurisdiction, and action was void and could be attacked directly, indirectly or collaterally at any time or place. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

##### **—Prohibited.**

Where county commissioners had in good faith acted on a matter within their jurisdiction, and no appeal was taken as provided in former law, their order becomes final and was not subject to collateral attack. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Former law prescribed adequate remedy for contesting claims illegally allowed by board of county commissioners, and precluded a resort to equity by action to restrain county treasurer from paying warrants issued on such claims. *Picotte v. Watte*, 3 Idaho 447, 31 P. 805 (1892).

Former law provided speedy and adequate remedy by which taxpayers could procure review of illegal action by board of commissioners, and precluded resort to writ of review. *Rogers v. Hayes*, 3 Idaho 597, 32 P. 259 (1893); *Bobbitt v. Blake*, 25 Idaho 53, 136 P. 211 (1913).

Where no appeal was taken from order of county commissioners making a jury list, district court had no jurisdiction to quash panel on *ex parte* motion of prosecuting attorney. *Heitman v. Morgan*, 10 Idaho 562, 79 P. 225 (1905).

Person aggrieved by order of board of county commissioners establishing school district should have appealed from such order under former law and could not attack order for want of jurisdiction of commissioners to make same in a collateral proceeding. *School Dist. No. 25 v. Rice*, 11 Idaho 99, 81 P. 155 (1905).

Where action of board of commissioners in constituting justice's precinct was merely voidable, and not absolutely void, it could be reviewed only on appeal and could not be questioned in action of quo warranto to try title to office of justice in such precinct. *Johnston v. Savidge*, 11 Idaho 204, 81 P. 616 (1905).

To permit appellants to urge nonexistence of order appealed from would be to permit a collateral attack upon order. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

Where the board of county commissioners

had in good faith acted upon a matter within its jurisdiction, though improvidently, and no appeal was taken, the order became final and was not subject to collateral attack. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

Where plaintiffs had a complete, plain, speedy and adequate remedy by appeal from action of the board of county commissioners ordering a special bond election upon petition of taxpayers, they could not invoke the aid of equity to attack the petition and order. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

Action against former sheriff for alleged excess of budget appropriations where petition was pending in court regarding payment by the county commissioners of expenditures of the sheriff was premature before a determination of the petition; former law granted the right of judicial review of the decision of the board of county commissioners. *Bonneville County v. Hopkins*, 94 Idaho 536, 493 P.2d 395 (1972).

#### **Compliance with Notice Requirement.**

The record was devoid of any facts showing prejudice to the County Board of Commissioners by the notice of appeal not having been served on the clerk of the County Board. Under these circumstances, hospital substantially complied with the statutory requirements for service of the notice of appeal and the trial court erred in dismissing the appeal. *Eastern Idaho Health Servs., Inc. v. Burtenshaw*, 122 Idaho 904, 841 P.2d 434 (1992).

#### **Contents of Written Notice.**

It was clear that former § 31-1510 required only a written notice which specified the decision which was being appealed. No specific form was required, and there was no requirement that the statutory basis for the appeal be stated in the notice. A statement of the statutory grounds was not required under either Idaho Rule of Civil Procedure 83(f) or Idaho Appellate Rule 17; therefore the fact that there was no reference to former law in the notice of appeal was insufficient to support a finding of lack of jurisdiction. *Eastern Idaho Health Servs., Inc. v. Burtenshaw*, 122 Idaho 904, 841 P.2d 434 (1992).

#### **Discretion of Court.**

Former law vested district judge with discretionary power, and judgment entered thereunder, after hearing, finding that no necessity existed for immediate hearing of appeal from order made by board of county commissioners, and continuing the matter until the next regular term of district court, was an exercise of such discretionary power, and mandamus would not lie to compel such court to reverse its decision and hear the case.

*Board of County Comm'rs v. Mayhew*, 5 Idaho 572, 51 P. 411 (1897).

#### **Effect of Appeal.**

Appeal taken under former law was not commencement of new action or proceeding, but was a mere transfer of original proceedings from one tribunal to another. *Van Camp v. Board of Comm'rs*, 2 Idaho (Hasb.) 29, 2 P. 721 (1884).

On appeal from order of board of county commissioners, where they were vested with discretionary power, court could pass on questions of law only, and not facts upon which board exercised its discretion. *Sullivan v. Board of County Comm'rs*, 22 Idaho 202, 125 P. 191 (1912).

In village incorporation, commissioners had discretionary power to choose between conflicting petitions. If there was no abuse of discretion, court had to affirm on appeal. In re Chubbuck, 71 Idaho 60, 226 P.2d 484 (1950).

#### **Failure to Appeal.**

Where no appeal was taken from allowance by board of commissioners of claims against county, such allowance became final and had the effect of a final judgment after the time for appeal expired. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

#### **Improper Claims.**

Watermaster's compensation for April and May, claims for which had previously been allowed by board of county commissioners, should not have been included in the district court's judgment affirming the order of the board allowing claims for compensation, though no warrants had been issued in payment of the earlier claims. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

#### **Necessity of Undertaking.**

No undertaking on appeal was necessary either on appeal from order of board of county commissioners to district court, or from district court to Supreme Court, on the same question, unless required by judge of district court for reasons mentioned in former law. *Ravenscraft v. Board of Comm'rs*, 5 Idaho 178, 47 P. 942 (1897).

Appellant appealing from an order of board of county commissioners had to file an undertaking, unless appeal was taken for purpose of protecting interests of county, or his appeal would be dismissed. *Davis v. Elmore County*, 9 Idaho 764, 75 P. 910 (1904).

Giving of a bond was not a jurisdictional prerequisite to perfection of appeal from order of board of county commissioners, and such appeal would not be dismissed for failure to give the bond, in the absence of an order of district judge requiring the bond. *Great N. Ry. v. Kootenai County*, 10 Idaho 379, 78 P. 1078 (1904).



**Notice of Appeal.**

The reasons or grounds for appeal from an order of the board of county commissioners need not be stated in the notice of appeal. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

Where property owners sought appeal from board's final approval of real estate development, the property owners' mailing of notice of appeal to the planning and zoning commission, to the board of adjustment and to the county commissioners was substantial compliance with notice requirement for appeal to the district court, in the absence of a showing that the board was prejudiced by the notice of appeal not having been served on the clerk. *In re Bennion*, 97 Idaho 764, 554 P.2d 942 (1976).

**Pleadings Not Required.**

Under the territorial statute governing appeals from county commissioners, it was held that no other written pleadings than notice of appeal were required, and questions of law could be presented by motion to dismiss, by inspection or by demurrer. *Gorman v. Board of County Comm'rs*, 1 Idaho 655 (1877).

**Procedure on Appeal.**

On an appeal from an order of the board of county commissioners, the case had to be tried anew in the district court, and in such trial the board or person in whose favor a claim had been allowed had the affirmative and had to produce evidence to make a prima facie case. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

**Publication of Commissioner's Actions.**

Contracts between county and independent appraiser for revaluation of county real property were not voided by board of commissioners' failure to comply with § 31-819 requiring publication of all board's acts and proceedings, nor was the county precluded from using the information secured under such contract, particularly where there was no showing that taxpayers were prejudiced in regard to their right to appeal by asserted failure of publication. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

The strictures of § 31-819, when construed in pari materia with former law, required the publication of the acts of the boards of county commissioners to the end that persons aggrieved by such actions may have had the opportunity to bring an appeal to the district courts and the time for bringing such appeals was limited. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

**Remedy by Appeal.**

The board of county commissioners could not rescind an order vacating and abandoning

a right of way. It could be vacated only by appeal to the district court. *Kootenai County v. Kinman*, 56 Idaho 1, 47 P.2d 887 (1935).

**Right of Appeal.**

Question of whether or not an appeal lies from an order fixing the county's final budget did not affect county commissioner's personal liability for allowance of claims for expenses and drawing of warrant therefor on proper fund in excess of levy made for such fund. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**Statutory Remedy.**

Where legislature did not provide for right of appeal in statute providing for application to county commissioners for license to operate summer resort outside city limits, it could not be said that legislature impliedly intended that existing statutes relating to appeal should apply. *Young v. Board of County Comm'rs*, 67 Idaho 302, 177 P.2d 162 (1947).

**Time for Appeal.**

Person aggrieved by order of board of commissioners needed not wait until the statement had been published or posted, but could take his appeal forthwith. *Ravenscraft v. Board of Comm'rs*, 5 Idaho 178, 47 P. 942 (1897).

Appeals under former law had to be taken within time limited by statute; otherwise they will be too late. *Williams v. Board of County Comm'rs*, 48 Idaho 462, 282 P. 867 (1929).

Where taxpayer did not appeal within twenty days from alleged illegal action of county board of commissioners in setting tax levies without taking into account estimated revenues from sources other than taxation, taxpayer was precluded from maintaining action for declaratory judgment and refund of ad valorem taxes paid under protest. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

The lack of a financial summary in the Board of Commissioners' report did not prejudice the plaintiff in regard to his decision to appeal the renewal of beer licenses, and thus did not toll the 20-day filing period under former law. *Fox v. Board of County Comm'rs*, 114 Idaho 940, 763 P.2d 313 (Ct. App. 1988).

Former law provided the only authority by which a taxpayer aggrieved by the renewal of beer licenses could seek judicial review of the county's decision, and the 20-day time limitation was reasonable. *Fox v. Board of County Comm'rs*, 114 Idaho 940, 763 P.2d 313 (Ct. App. 1988).

**When Perfected.**

An appeal from an order of the board of commissioners could be taken to the district court, and, when so taken, the action was commenced when the notice of the appeal was



filed with the clerk of the board. *Rupert v. Board of County Comm'rs*, 2 Idaho 19, 2 P. 718 (1882) (decided prior to 1911 amendment).

An appeal from an order of the board of commissioners was perfected when notice is given the clerk of the board and such appeal should not have been dismissed for failure to give an undertaking in absence of an order by the judge requiring same to be given. *Kootenai Valley Ry. v. Kootenai County*, 10 Idaho 386, 78 P. 1080 (1904).

#### **Who May Appeal.**

Former law applied only to persons and taxpayers and had no application to county itself, and a failure to appeal from order of board of commissioners did not preclude county from resisting enforcement of a claim illegally allowed by board of commissioners. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906); *Kootenai County v. Dittmore*, 12 Idaho 758, 88 P. 232 (1906).

Prosecuting attorney could appeal to district court from an order of board of county commissioners refusing to comply with his request to require certain officers to turn certain fees into county treasury. *Rhea v. Board of County Comm'rs*, 12 Idaho 455, 12 Idaho 460, 88 P. 89 (1907).

Any person or taxpayer within territory aggrieved by an order for incorporation of village could appeal. *Gardner v. Blaine County*, 15 Idaho 698, 99 P. 826 (1909); *Village of Ilo v. Ramey*, 18 Idaho 642, 112 P. 126 (1910).

Rural high school district was a party aggrieved by order segregating school district from rural high school district. *Rural High*

*School Dist. No. 1 v. School Dist. No. 37*, 32 Idaho 325, 182 P. 859 (1919).

An appeal filed by city from order incorporating a village to which incorporation the city objected on the grounds that the proposed village contained fewer than 125 residents, that the proposed boundaries were irregular, bizarre and fantastic, that its incorporation would materially hamper the ordinary growth of the city would be dismissed on the ground that the city was neither a "person aggrieved" by the order, nor a "taxpayer of the county" and therefore was not authorized to appeal under the provisions of former law. In re *Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958).

The district court held that landowner was a taxpayer who deemed the actions of the County Board of Commissioners to be illegal, and concluded that he therefore had standing to appeal the Commissioners' decisions, which appeared to be a proper application of the provisions of former law. *Fox v. Board of County Comm'rs*, 121 Idaho 686, 827 P.2d 699 (Ct. App. 1991).

#### **Witnesses' Fees.**

That witnesses were subpoenaed on behalf of claimant, who were not sworn and who did not testify on an appeal from an order allowing claim against a county because the notice of appeal did not specify in what respect appellants considered themselves aggrieved, and appellants failed to introduce anticipated evidence on an issue as to whether claimant, rather than appellants, had the burden of proof, did not justify the allowance of fees claimed for such witnesses. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

**31-1507. Procedures for redeeming registered warrants.** — If the board of county commissioners declares an emergency pursuant to section 31-1608, Idaho Code, the process of funding registered warrants shall conform with current banking and accounting requirements.

When necessary, the county treasurer shall identify ways of redeeming warrants, including short term borrowing from other county funds at market interest rates, until a warrant redemption levy is established as provided in section 63-806(1), Idaho Code. To this end, the county treasurer may contact local financial institutions about currently available interim financing options. After reviewing the alternatives provided by the county treasurer, the board of county commissioners shall, by resolution, select the method of financing and the interest rate to be paid and direct the county auditor to establish the warrant redemption fund. The county treasurer shall complete necessary arrangements to secure sufficient funds to redeem registered warrants. [I.C., § 31-1512, as added by 1994, ch. 35, § 2, p. 53; am. and redesisg. 1995, ch. 61, § 12, p. 134; am. 1996, ch. 322, § 11, p. 1029.]

## STATUTORY NOTES

**Prior Laws.** — Former § 31-1507, which comprised R.S., § 1774; reen. R.C. & C.L., § 1948; C.S., § 3507; I.C.A., § 30-1106, was repealed by S.L. 1995, ch. 61, § 5, effective after passage and approval, retroactive to January 1, 1995.

**Compiler's Notes.** — This section was formerly compiled as § 31-1512.

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61 provided that § 12 should be in full force and effect on and after July 1, 1995.

**31-1508. Transfer of moneys — Order of payment.** — The board must not transfer any money from one fund to another nor in any manner divert the money in any fund to other uses, except in cases expressly provided and permitted by law: provided, that when any money shall have been assessed and collected in any of the counties of this state, and the same set apart as a separate fund, for special purpose, and from any cause the money in said fund shall have become inoperative for the purpose for which said fund was created, it shall be lawful for the board of county commissioners in such cases to transfer the money in said fund to such fund as the board of county commissioners may deem best. No transfer of money from one (1) county fund to another county fund shall be made upon the books of the county auditor and county treasurer unless the same is so authorized and so ordered by resolution of the board entered upon the records of its proceedings and certified copies of such resolution filed in the office of the county auditor and county treasurer.

The board shall not make any preferred creditor, nor cause any warrant to be drawn payable out of its order except on the order of the district court in cases provided by law, and the county treasurer shall in all things observe these instructions. [1869, p. 100, § 10; R.S., § 1767; reen. R.C. & C.L., § 1944; C.S., § 3503; I.C.A., § 30-1102; am. 1989, ch. 10, § 1, p. 11; am. and redesisg. 1995, ch. 61, § 13, p. 134; am. 1996, ch. 322, § 12, p. 1029.]

## STATUTORY NOTES

**Compiler's Notes.** — Former § 31-1508 was amended and redesignated as § 31-1505 by § 10 of S.L. 1995, ch. 61.

This section was formerly compiled as § 31-1502.

**Effective Dates.** — Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

## JUDICIAL DECISIONS

**Cited in:** Reynolds Constr. Co. v. Twin Falls County, 92 Idaho 61, 437 P.2d 14 (1968).

**31-1509. Accounting system.** — The system for accounting of receipts, expenditures and reporting in each county shall meet the criteria of generally accepted accounting principles or the governmental accounting standards board and as the same may be hereafter amended and revised. [I.C., § 31-1509, as added by 1995, ch. 61, § 14, p. 134.]

## STATUTORY NOTES

**Prior Laws.** — A former § 31-1509, which comprised R.S., § 1776; am. 1895, p. 50, § 1; reen. 1889, p. 248, § 1; am. R.C., § 1950; am. 1913, ch. 143, § 3, p. 506; reen. C.L., § 1950; C.S., § 3509; I.C.A., § 30-1108, was repealed by S.L. 1993, ch. 103, § 1, effective July 1, 1993.

**Compiler's Notes.** — Former § 31-1509 was amended and redesignated as § 31-1506

by § 11 of S.L. 1995, ch. 61.

**Effective Dates.** — Section 23 of S.L. 1995, ch. 61, declared an emergency and provided that §§ 1 through 11, and §§ 13 through 22 of this act shall be in full force and effect on and after March 9, 1995, retroactive to January 1, 1995, and that § 12 should be in full force and effect on July 1, 1995. Approved March 9, 1995.

## JUDICIAL DECISIONS

**Cited in:** *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002).

**31-1510. Definitions.** — (1) A "warrant" is an order drawn by the board of county commissioners directing the county treasurer to pay a specified amount to a person named or to the bearer. It may be payable on demand or it may be issued as a short-term obligation payable. Determination of warrant type in each county shall be set by the board of county commissioners after consultation with the county treasurer and county auditor.

(2) A "registered warrant" is a warrant drawn on a fund which has insufficient funds to pay it and has been identified and logged by the county treasurer and county auditor and thereafter paid in the order of its presentation. [I.C., § 31-1510, as added by 1994, ch. 35, § 2, p. 53.]

## STATUTORY NOTES

**Prior Laws.** — Former §§ 31-1510 and 31-1511, which comprised 1869, p. 100, § 20; R.S., §§ 1777, 1778; am. 1895, p. 50, § 1; reen. 1899, p. 248, § 1; am. and reen. R.C. &

C.L., § 1951; reen. R.C. & C.L., § 1952; C.S., §§ 3510, 3511; I.C.A., §§ 30-1109 and 30-1110, were repealed by S.L. 1993, ch. 103, § 1, effective July 1, 1993.

**31-1511. Signatures required on warrants and method of payment.** — Warrants payable on demand and drawn by order of the board of county commissioners on the county treasury shall be jointly issued and signed by the county auditor and the county treasurer. If the board of commissioners chooses to issue warrants not payable upon demand, they shall be issued by the county auditor and redeemed by the county treasurer. Warrants must specify the liability for which they are drawn, when accrued, and must be paid in the order of presentation to the county treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration. [I.C., § 31-1511, as added by 1994, ch. 35, § 2, p. 53.]

## STATUTORY NOTES

**Prior Laws.** — Former section 31-1511 was repealed. See Prior Laws note under § 31-1510.



31-1512. [Amended and Redesignated.]

STATUTORY NOTES

**Prior Laws.** — A former § 31-1512, which comprised 1869, p. 100, § 19; R.S., § 1779; am. 1895, p. 50, § 1; reen. 1899, p. 248, § 1; modified 1899, p. 273, § 1, subd. 4; compiled and reen. R.C. & C.L., § 1953; C.S., § 3512; I.C.A., § 30-1111, was repealed by S.L. 1994,

ch. 35, § 1, effective July 1, 1994, and S.L. 1994, ch. 241, § 2, effective March 30, 1994.  
**Compiler's Notes.** — Former § 31-1512 was amended and redesignated as § 31-1507 by § 12 of S.L. 1995, ch. 61.

31-1513, 31-1514. Dissatisfied claimant may sue — Warrants — How drawn and presented. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — Section 31-1513, which comprised R.S., § 1780; reen. R.C. & C.L., § 1954; C.S., § 3513; I.C.A., § 30-1112, was repealed by S.L. 1994, ch. 241, § 2, effective March 30, 1994.

Section 31-1514, which comprised R.S., § 1781; reen. R.C. & C.L., § 1955; C.S., § 3514; I.C.A., § 30-1113, was repealed by S.L. 1994, ch. 35, § 1, effective July 1, 1994.

31-1515 — 31-1518. Commissioners must be disinterested — License application transfers — Verification of commissioners' claims — Financial statement preparation. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — The following sections were repealed by S.L. 1995, ch. 61, § 5, effective upon passage and approval, retroactive to January 1, 1995:\*

§ 31-1515, which comprised 1869, p. 100, § 10, subd. 8; R.S., § 1782; reen. R.C. & C.L., § 1956; C.S., § 3515; I.C.A., § 30-1114. For present law see § 31-807A.

§ 31-1516, which comprised R.S., § 1783; reen. R.C. & C.L., § 1957; C.S., § 3516;

I.C.A., § 30-115. For present law see § 31-815A.

§ 31-1517, which comprised R.S., § 1786; am. reen. R.C. & C.L., § 1958; C.S., § 3517; I.C.A., § 30-116.

§ 31-1518, which comprised 1901, p. 294, § 2; compiled and reen. R.C. & C.L., § 1959; C.S., § 3518; I.C.A., § 30-1117; am. 1976, ch. 45, § 20, p. 122.

CHAPTER 16

COUNTY BUDGET LAW

SECTION.

31-1601. Commencement of county fiscal year.

31-1602. Duties of budget officer — Estimate of expenses.

31-1603. Suggested budget — Contents.

31-1604. Approval of tentative appropriations — Notice — Final appropriations.

31-1605. Hearing upon budget appropriations — Adoption of final bud-

SECTION.

get — Fixing of levies — General reserve appropriation.

31-1605A. Authorization for counties to operate on a cash basis.

31-1606. Expenditure limited by appropriations — Road and bridge appropriations — Increase of salaries.

31-1607. Expenditures financed by bond issue — Expenditures in excess

## SECTION.

of appropriations — Liability of officers.

31-1608. Expenditures to meet emergency.

31-1609. Lapse of appropriations — Incomplete improvements.

## SECTION.

31-1610. [Repealed.]

31-1611. Quarterly statements.

31-1612. [Repealed.]

31-1613. Separability.

**31-1601. Commencement of county fiscal year.** — The fiscal year of each county of this state shall commence on the first day of October of each year. [1931, ch. 122, § 1, p. 210; I.C.A., § 30-1201; am. 1976, ch. 45, § 9, p. 122.]

### STATUTORY NOTES

**Compiler's Notes.** — Section 31 of S. L. 1976, ch. 45 read: "Transitional budget and levy. The budget adopted by each city in the state of Idaho on or prior to March 31, 1977 shall provide for a fiscal year, January 1 to September 30, 1977. The levy certified to the county commissioners on the second Monday of September in 1977 shall be based only upon either the said budget and an estimate of the expenditures for an additional three month period, October 1 through December 31, 1977 or only upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

The budget adopted by the county commissioners in each of the counties in the state of

Idaho during the week of the second Monday in February 1977 shall provide for a fiscal year from the second Monday in January to September 30, 1977. The levy certified on the second Monday of September, 1977 shall be based only upon either said budget and include an estimate of expenditures for an additional three month period, October 1 through December 31, 1977 or upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

Prior to October 1, 1977 and every year thereafter, all cities and counties in the state of Idaho shall adopt a budget for the ensuing fiscal year, October 1 through September 30."

### JUDICIAL DECISIONS

#### Purpose of Law.

It was the intention and purpose of the Legislature by enactment of the County Budget Law to place and keep the counties of Idaho on a cash basis (not to put the counties in a straitjacket), and to that end prohibit the contracting of indebtedness in excess of reve-

nues available for the year in which the indebtedness might be contracted. *Iverson v. Canyon County*, 69 Idaho 132, 204 P.2d 259 (1949).

**Cited in:** *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

**31-1602. Duties of budget officer — Estimate of expenses.** — The county auditor of each county in this state shall be the budget officer of his county, and as such budget officer, it shall be his duty to compile and prepare a preliminary budget for consideration by the county commissioners of his county, and upon the adoption of the final budget, as hereinafter provided, it shall be his duty to see that the provisions thereof are complied with.

On or before the first Monday in May of each year the county budget officer shall notify, in writing, each county official, elective or appointive, in charge of any office, department, service, agency or institution of the county, to file with such budget officer, on or before the third Monday in May thereafter, an itemized estimate showing both the probable revenues from sources other than taxation that will accrue to his office, department, service, agency or institution during the fiscal year, to which the budget is

intended to apply, and all expenditures required by such office, department, service, agency, or institution, for the same period, together with a brief explanatory statement of the request.

Said estimates and reports shall be submitted upon forms furnished by the budget officer showing the entire revenues and expenditures under each classification and subdivision thereof the two (2) preceding fiscal years, the amount actually received and expended to the second Monday of April of the current fiscal year, and the estimated total receipts and expenditures for the current fiscal year and show any and all estimated balances, at the end of the current fiscal year, in any appropriation available and applicable to the functions performed by such office, department, service, agency or institution.

Said estimates of probable expenditures shall be under classifications set by the board of county commissioners, to include, at a minimum, the "Salaries, Benefits, and Detail of Other Expenses."

If any county official, elective or appointive, in charge of any office, department, service, agency or institution has had, or contemplates having, any expenditures, the reports of which can not be properly made under any of the above classifications, the same shall be reported in detail in addition to the information provided for in said forms.

Any official or employee failing or refusing to furnish said estimates or information within the time hereinabove provided shall pay a penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) as may be determined by order of the board of county commissioners, said penalty to be deducted by the county auditor from the next salary warrant due such official or employee and credited to the current expense fund of said county.

In the event of the absence, failure or disability of any official or employee required to furnish estimates and information, as hereinabove provided, the budget officer may designate any person temporarily in charge of such office, department, service, agency or institution to furnish said estimates and information required by this act. Provided, however, if for any cause said estimates and information are not filed with the budget officer in proper time to be included in the county budget hereinafter provided for, the budget officer shall prepare an estimate of expenditures for any such office, department, service, agency or institution, so failing to file its estimate, and such estimate so prepared by the budget officer and approved by the county commissioners shall be the budget for that office, department, service, agency or institution for the fiscal year to which the budget is intended to apply. [1931, ch. 122, § 2, p. 210; I.C.A., § 30-1202; am. 1976, ch. 45, § 10, p. 122; am. 1982, ch. 191, § 1, p. 515; am. 1995, ch. 61, § 15, p. 134.]

#### STATUTORY NOTES

**Cross References.** — Creation of county hospital board, § 31-3601.

Officers elected, §§ 34-617 — 34-625.



**JUDICIAL DECISIONS****Legal Standing.**

Elected officials (auditor, treasurer, sheriff, assessor) had standing to challenge whether a taxpayer coalition's referendum and initiative were the proper means to reject an ad valorem tax levy and establish a budget process for a county where the elected officials established that they would suffer a "distinct pal-

pable injury" if the referendum and initiative pass because they would be unable to perform their lawful duties. *Weldon v. Bonner County Tax Coalition*, 124 Idaho 31, 855 P.2d 868 (1993).

**Cited in:** *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

**31-1603. Suggested budget — Contents.** — Upon the receipt by the county budget officer of the estimates and information from all offices, departments, services, agencies and institutions of the county, or the preparation thereof by said budget officer, as hereinabove provided, said county budget officer shall prepare and file with the board of county commissioners a suggested budget of said county for the ensuing fiscal year. Said suggested budget shall show, so far as practicable, the complete financial program of the county for the ensuing fiscal year by showing all contemplated expenditures and the source of revenues with which to pay the same. [1931, ch. 122, § 3, p. 210; I.C.A., § 30-1203; am. 1976, ch. 45, § 11, p. 122; am. 1978, ch. 271, § 2, p. 628; am. 1995, ch. 61, § 16, p. 134.]

**JUDICIAL DECISIONS****Publication of Budget.**

The county budget laws require the county to publish the county's hospital salary expenses and nonproperty tax revenues in the county budget. *Idaho Home Health, Inc. v. Bear Lake County*, 128 Idaho 800, 919 P.2d 329 (1996).

**Cited in:** *Oregon S.L.R.R. v. Washington County*, 54 Idaho 171, 30 P.2d 198 (1934); *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**31-1604. Approval of tentative appropriations — Notice — Final appropriations.** — The suggested budget prepared by the county budget officer as hereinabove provided, together with the estimates and information furnished by the various offices, departments, services, agencies and institutions of the county shall be submitted by said county budget officer to the board of county commissioners of his county on or before the first Monday in August of each year; said county commissioners shall convene to consider said proposed budget in detail and make any alterations allowable by law and which they deem advisable, and agree upon a tentative amount to be allowed and appropriated for the ensuing fiscal year to each office, department, service, agency or institution of the county. Such allowances or appropriations shall be made under the classifications of:

"Salaries" or "Salaries and Benefits," and

"Detail of Other Expenses," or "Detail of Other Expenses and Benefits," and may include "Benefits," as a separate category as hereinafter provided.

When the commissioners have agreed on such tentative appropriations the county budget officer, not later than the third week in August, shall cause notice to be published setting forth the amount of anticipated revenue from property taxes and the total of revenues anticipated from sources other than property taxes and the amount proposed to be appropriated to each

office, department, service, agency or institution for the ensuing fiscal year, in not less than two (2) classifications and which shall include "Salaries," or "Salaries and Benefits," and "Detail of Other Expenses," or "Detail of Other Expenses and Benefits," and which may include "Benefits" as a separate classification together with the amounts expended under these classifications during each of the two (2) previous fiscal years by each office, department, service, agency or institution; and that the board of county commissioners will meet on or before the Tuesday following the first Monday in September, next succeeding, for the purpose of considering and fixing a final budget and making appropriations to each office, department, service, agency or institution of the county for the ensuing fiscal year at which time any taxpayer may appear and be heard upon any part or parts of said tentative budget and fixing the time and place of such meeting. Said notice shall be published in a newspaper as prescribed in section 31-819, Idaho Code. [1931, ch. 122, § 4, p. 210; I.C.A., § 30-1204; am. 1976, ch. 45, § 12, p. 122; am. 1981, ch. 318, § 1, p. 662; am. 1993, ch. 25, § 1, p. 86; am. 1995, ch. 61, § 17, p. 134; am. 1997, ch. 48, § 1, p. 81.]

### STATUTORY NOTES

**Cross References.** — Publication of notices, § 60-109. Service officer, salary, § 65-602.

### JUDICIAL DECISIONS

#### ANALYSIS

Discretion of board.

— Abuse.

Ordering payment of claims.

Purpose of law.

Review.

#### Discretion of Board.

##### — Abuse.

It is only where there is a clear showing that board failed to exercise legal discretion that courts should revise the action of the board in fixing salary of the clerk of the probate court. *Huffaker v. Board of County Comm'rs*, 54 Idaho 715, 35 P.2d 260 (1934).

There was an abuse of discretion on the part of the board of commissioners in reducing the salary of probate clerk from \$90 to \$50 per month, where the evidence warranted the board to have acted either way. *Huffaker v. Board of County Comm'rs*, 54 Idaho 715, 35 P.2d 260 (1934).

#### Ordering Payment of Claims.

The courts can order the payment of claims against the county if based on contract though not provided for in the budget. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

#### Purpose of Law.

It was the intention and purpose of the Legislature by enactment of the County Bud-

get Law to place and keep the counties of Idaho on a cash basis (not to put the counties in a straitjacket), and to that end prohibit the contracting of indebtedness in excess of revenues available for the year in which the indebtedness might be contracted. *Iverson v. Canyon County*, 69 Idaho 132, 204 P.2d 259 (1949).

The purpose of the budget law is to prescribe the procedure for the exercise of commissioner's power to manage the fiscal business of the county. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

#### Review.

In reviewing the action of the county board fixing salaries of officers, courts are confined to the determination whether they abuse their discretion. *Huffaker v. Board of County Comm'rs*, 54 Idaho 715, 35 P.2d 260 (1934).

**Cited in:** *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

**31-1605. Hearing upon budget appropriations — Adoption of final budget — Fixing of levies — General reserve appropriation. —**

On or before the Tuesday following the first Monday in September of each year the board of county commissioners shall meet at the time and place designated in said notice. Any taxpayer may appear and be heard upon any part or parts of said tentative budget. Such hearing may be continued from day to day but must be concluded by the second Monday in September. Any officer or employee in charge of any office, department, service, agency or institution of the county may be called before said board at the time the estimates for his office, department, service, agency or institution are under consideration and be examined by said board or any taxpayer concerning the expenditures made by him and the estimated expenditures for the ensuing fiscal year.

Upon the conclusion of such hearing, the county commissioners shall fix and determine the amount of the budget, which in no event shall be greater than the amount of the tentative budget or include an amount to be raised from property taxes greater than the amount advertised, and by resolution adopt the budget and enter said resolution on the official minutes of the board.

Said budget as finally adopted for the ensuing fiscal year shall specify the fund or funds against which warrants shall be issued for the expenditures so authorized, respectively, and the aggregate of expenditures authorized against any fund shall not exceed the estimated revenues to accrue to such fund during the ensuing fiscal year from sources other than taxation together with any balances and plus revenues to be derived from taxation for such ensuing fiscal year, within the limitations imposed by chapter 8 of title 63, Idaho Code, or by any statutes of the state of Idaho in force and effect.

Thereafter, at the time provided by law, the board of county commissioners shall fix the levies for the ensuing fiscal year necessary to raise the amount of expenditures as determined by the adopted budget, less the total estimated revenues from sources other than taxation, including available surplus, not subject to the provisions of section 31-1605A, Idaho Code, as determined by the board, and such expenditures as are to be made with the proceeds of authorized bond issues.

During the year the county commissioners may proceed to adjust the budget as adopted to reflect the receipt of unscheduled revenue, grants, or donations from federal, state or local governments or private sources, provided that there shall be no increase in anticipated property taxes. The annual budget procedure shall be complied with as nearly as practicable before the budget may be adjusted.

The board shall also have the right to make a "general reserve appropriation," said appropriation not to exceed five per cent (5%) of the current expense budget as finally adopted, the total levy however, for current expense, including the "general reserve appropriation," to be within the limitations imposed by chapter 8 of title 63, Idaho Code, or by any statutes of the state of Idaho in force and effect. In the event of any unforeseen contingency arising, which could not reasonably have been foreseen at the



time of making the budget, and which shall require the expenditure of money not provided for in the budget, the board of county commissioners, by unanimous vote thereof, shall have the right to make an appropriation from the "general reserve appropriation" to the office, department, service, agency or institution in which said contingency arises, in such amount as shall be determined by resolution of said board. Provided, however, that no appropriation may be made from the "general reserve appropriation" to any county fund which is authorized under the law to make a special levy. [1931, ch. 122, § 5, p. 210; I.C.A., § 30-1205; am. 1975, ch. 153, § 1, p. 393; am. 1976, ch. 45, § 13, p. 122; am. 1981, ch. 318, § 2, p. 662; am. 1990, ch. 24, § 1, p. 36; am. 1995, ch. 61, § 18, p. 134; am. 1996, ch. 322, § 13, p. 1029.]

### STATUTORY NOTES

**Effective Dates.** — Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

### JUDICIAL DECISIONS

#### ANALYSIS

Appeal from action of commissioners.

Application.

Compliance with statute.

Criticism of budget.

Discretion of board.

Management of fiscal business.

Payment of claims ordered.

Prohibition to prevent increase of levy.

Referendum.

#### **Appeal from Action of Commissioners.**

Where taxpayer did not appeal within twenty days from alleged illegal action of county board of commissioners in setting tax levies without taking into account estimated revenues from sources other than taxation, taxpayer was precluded from maintaining action for declaratory judgment and refund of ad valorem taxes paid under protest. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

Where taxpayer sought a declaratory judgment that action of county commissioners in setting tax levies without taking into account estimated revenues from sources other than taxation violated this section and also sought a refund of those ad valorem taxes paid under protest, the time for taxpayer's appeal was within twenty days after the first publication of the ad valorem tax levies and not within sixty days of payment of taxes under protest. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

#### **Application.**

The act of the county commissioners in increasing relief levy, pursuant to emergency legislation enacted after the county budget was set up, was not violative of the county

budget law, in that the budget could not be changed after adoption thereof, in view of the provision in the county budget law relating to contingencies arising after initial setting up of the budget. *Justus v. DeCoursey*, 63 Idaho 29, 115 P.2d 756 (1941).

#### **Compliance with Statute.**

If county commissioners comply with this section, revenues will equal expenditures so far as can be foreseen. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

#### **Criticism of Budget.**

Where publishers purport to be residents of the county having a right to participate in a public budget hearing and to comment on and criticize the budget proposed by the county commissioners and have the right to propose and promote the recall of one or more of the commissioners, both the publishers and the occasion are conditionally privileged and, in the absence of a showing of an abuse of privilege, are not liable in an action for libel for the publishing of a letter addressed to fellow taxpayers concerning above subject. *Gough v. Tribune-Journal Co.*, 75 Idaho 502, 275 P.2d 663 (1954).

**Discretion of Board.**

In fixing the county budget, the board exercised proper discretion in reducing the salary of the probate clerk. *Huffaker v. Board of County Comm'rs*, 54 Idaho 715, 35 P.2d 260 (1934).

**Management of Fiscal Business.**

The purpose of the budget law is to prescribe the procedure for the exercise of commissioner's power to manage the fiscal business of the county. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

**Payment of Claims Ordered.**

The courts can order the payment of claims against the county if based on contract though not provided for in the budget. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

**Prohibition to Prevent Increase of Levy.**

A writ of prohibition will lie to prevent county commissioners from increasing tax

levy pursuant to emergency legislation enacted after the county budget was set up, on the ground that the increased levy was violative of the county budget law, in that the budget could not be changed after adoption thereof, since the question of jurisdiction was involved and the matter was of state-wide importance and should be promptly decided. *Justus v. DeCoursey*, 63 Idaho 29, 115 P.2d 756 (1941).

**Referendum.**

Referenda and initiatives in Idaho are constrained to addressing "acts" or "measures" passed by a legislative body; therefore, taxpayer coalition's referendum was not the proper means to reject a county's budgeting process. *Weldon v. Bonner County Tax Coalition*, 124 Idaho 31, 855 P.2d 868 (1993).

**Cited in:** *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983); *V-1 Oil Co. v. State Tax Comm'n*, 112 Idaho 508, 733 P.2d 729 (1987).

**31-1605A. Authorization for counties to operate on a cash basis.**

— Counties may accumulate fund balances at the end of a fiscal year and carry over such fund balances into the ensuing fiscal year sufficient to achieve or maintain county operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves. Upon resolution by the board of county commissioners, such funds may be carried over for the use of specific county departments as an additional appropriation in the next fiscal year. [I.C., § 31-1605A, as added by 1976, ch. 45, § 14, p. 122; am. 1995, ch. 61, § 19, p. 134.]

**JUDICIAL DECISIONS****Constitutionality.**

This section does not violate Const., Art. 7, §§ 15 and 16. *V-1 Oil Co. v. State Tax Comm'n*, 112 Idaho 508, 733 P.2d 729 (1987).

**31-1606. Expenditure limited by appropriations — Road and bridge appropriations — Increase of salaries.** — The estimates of expenditures as classified in each of the three (3) general classes, "Salaries," "Benefits" and "Detail of Other Expenses," required in section 31-1602, Idaho Code, as finally fixed and adopted as the county budget by said board of county commissioners, shall constitute the appropriations for the county for the ensuing fiscal year. Each and every county official or employee shall be limited in making expenditures or the incurring of liabilities to the respective amounts of such appropriations. Provided, in the case of road and bridge appropriations, other than "Salaries" and "Benefits," any lawful transfer deemed necessary may be made by resolution formally adopted by the board of county commissioners at a regular or special meeting thereof, which action must be entered upon the minutes of said board; provided, further, that no salary may be increased during the ensuing year after the

final budget is adopted, without resolution of the board of county commissioners, which resolution shall be entered upon their minutes. [1931, ch. 122, § 6, p. 210; I.C.A., § 30-1206; am. 1976, ch. 45, § 15, p. 122; am. 1995, ch. 61, § 20, p. 134.]

JUDICIAL DECISIONS

**Cited in:** Reynolds Constr. Co. v. Twin Falls County, 92 Idaho 61, 437 P.2d 14 (1968); LaBrosse v. Board of Comm’rs, 105 Idaho 730, 672 P.2d 1060 (1983).

**31-1607. Expenditures financed by bond issue — Expenditures in excess of appropriations — Liability of officers.** — Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditures shall be made or incurred until such bonds have been duly authorized and the proceeds therefrom are available.

Expenditures made, liabilities incurred or warrants issued in excess of any of the budget appropriations or as revised by transfer as herein provided, shall not be a liability of the county, but the official making or incurring such liability, expenditure, or issuing such warrant shall be liable therefor personally and upon his official bond, as is hereinafter provided. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of said budget appropriations or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. Any county officer creating any liability or any county commissioner or commissioners, or county auditor approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall be liable to the county for the amount of such claim or warrant which amount shall be recovered by action against such county official, elective or appointive, county commissioner or commissioners or auditor, or all of them and their several sureties on their official bonds. It shall be the duty of the prosecuting attorney of such county to bring such action in the name of said county in any court of competent jurisdiction; provided, that no action shall be maintained or prosecuted for any liability heretofore or hereafter incurred under the provisions of chapter 232 of the Idaho Session Laws, 1927, as amended by chapter 138 of the Idaho Session Laws, 1929, upon any state of facts which will not support an action under the provisions of this act. [1931, ch. 122, § 7, p. 210; I.C.A., § 30-1207.]

JUDICIAL DECISIONS

ANALYSIS

Action against county officer.  
Construction.  
Payment of claims ordered.

**Action Against County Officer.**  
Where petition, filed under this section, for court order requiring the board of county commissioners to authorize expenditure of

funds for payment of excess budget expenditures of the sheriff was pending, separate action by county against sheriff and his surety to recover alleged excesses was prema-



ture and improper. *Bonneville County v. Hopkins*, 94 Idaho 536, 493 P.2d 395 (1972).

**Construction.**

This section does not repeal § 31-2017. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**Payment of Claims Ordered.**

The courts can order the payment of claims against the county if based on contract though not provided for in the budget. *H.J. McNeel, Inc. v. Canyon County*, 76 Idaho 74, 277 P.2d 554 (1954).

**31-1608. Expenditures to meet emergency.** — Upon the happening of any emergency caused by fire, flood, explosion, storm, epidemic, riot or insurrection, or for the immediate preservation of order or of public health or for the restoration to a condition of usefulness of public property, the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by a calamity, or the settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, or the investigation and/or prosecution of crime, punishable by death or life imprisonment, when the board has reason to believe such crime has been committed in its county, the board of county commissioners may, upon the adoption, by the unanimous vote of the commissioners, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures necessary to investigate, provide for and meet such an emergency.

All emergency expenditures may be paid from any moneys on hand in the county treasury in the fund properly chargeable with such expenditures, and the county treasurer is hereby authorized to pay such warrants out of any moneys in the treasury in any such fund. If at any time there shall be insufficient moneys on hand in the treasury to pay any of such warrants, then such warrants shall be registered, bear interest, and be called in the manner provided by law for other county warrants.

The county budget officer shall include in the annual budget to be submitted to the board of county commissioners, the total amount of emergency warrants issued, registered and unpaid, during the current fiscal year and the board of county commissioners shall include in their appropriation an amount equal to the total of such registered and unpaid warrants. [1931, ch. 122, § 8, p. 210; I.C.A., § 30-1208; am. 1976, ch. 45, § 16, p. 122.]

**STATUTORY NOTES**

**Effective Dates.** — Section 32 of S. L. 1976, ch. 45 provided that this section should become effective on and after October 1, 1977.

**JUDICIAL DECISIONS**

**ANALYSIS**

Judicial review presupposed.  
Limited by income.

**Judicial Review Presupposed.**

The requirement that the board's resolution declaring an emergency state the facts consti-

tuting the emergency presupposes right of judicial review of the facts set forth in the resolution. *Reynolds Constr. Co. v. Twin Falls*

County, 92 Idaho 61, 437 P.2d 14 (1968).

**Limited by Income.**

This section does not authorize county commissioners to incur indebtedness in excess of income provided for the county for the year, in

violation of Const., art. 8, § 3. Lloyd Corp. v. Bannock County, 53 Idaho 478, 25 P.2d 217 (1933).

**Cited in:** Bonneville County v. Hopkins, 94 Idaho 536, 493 P.2d 395 (1972).

**OPINIONS OF ATTORNEY GENERAL**

The attorney general opined that the proposed One Percent Initiative would undermine the ability of government to function in times of emergency and it would conflict with

special levies to fund such unpredictable but legally required items as tort claim judgments and catastrophic medical indigency bills. OAG 91-9.

**31-1609. Lapse of appropriations — Incomplete improvements.**

— All appropriations, other than appropriations for incompleated improvements in progress of construction, shall lapse at the end of the fiscal year; provided, that the appropriation accounts may remain open until the first Monday in November for the payment of claims incurred against such appropriations prior to the close of the fiscal year. After the said first Monday in November the appropriations, except as herein provided regarding incompleated improvements, shall become null and void and any lawful claims presented thereafter against any such appropriations shall be provided for in the next ensuing budget. All balances in any appropriation for incomplete improvements in progress of construction, shall be carried forward and shown in the budget for the ensuing year to the credit of such improvement. [1931, ch. 122, § 9, p. 210; I.C.A., § 30-1209; am. 1976, ch. 45, § 17, p. 122; am. 1989, ch. 11, § 1, p. 12.]

**STATUTORY NOTES**

**Effective Dates.** — Section 32 of S. L. 1976, ch. 45 provided that this section should become effective on and after October 1, 1977.

**31-1610. Statement of preceding fiscal year — Contents. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — This section which comprised 1931, ch. 122, § 10, p. 210; I.C.A., § 30-1210; am. 1976, ch. 45, § 18, p. 122 was

repealed by S.L. 1995, ch. 61, § 21, effective retroactively to January 1, 1995.

**31-1611. Quarterly statements.** — On or before the last day of January, April, July and October in each fiscal year, the county budget officer shall submit to the board of county commissioners a statement showing the expenditures and liabilities against each separate budget appropriation incurred during the time elapsed of the budget period as nearly as practicable, together with the unexpended and unencumbered balance of each appropriation for each office, department, service, agency and institution. He shall set forth the receipts from taxation and from sources other than taxation for the same period and call to the attention of

the board of county commissioners any and all facts indicating any possible deficit or excessive expenditure by any officer or employee that the board may take such action as may be deemed necessary and expedient to prevent such possible deficit or excessive expenditure from any appropriation provided for in the county budget. [1931, ch. 122, § 11, p. 210; I.C.A., § 30-1211; am. 1976, ch. 45, § 19, p. 122; am. 1995, ch. 61, § 22, p. 134.]

#### STATUTORY NOTES

**Effective Dates.** — Section 32 of S. L. 1976, ch. 45 read: "In order to provide an orderly sequence for implementation of the provisions of this act: (a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977; (b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; (c) Sections 16, 17, 18, 19, 23, 24,

25, 28, and 29 shall be in full force and effect on and after October 1, 1977." Approved March 5, 1976.

Section 23 of S.L. 1995, ch. 61 declared an emergency and provided that §§ 1 — 11 and §§ 13 — 23 should be in full force and effect on passage and approval, retroactive to January 1, 1995, and that § 12 should be in full force and effect on and after July 1, 1995.

### 31-1612. Duty of state auditor. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section which comprised S.L. 1931, ch. 122, § 12, p. 210;

I.C.A., § 30-1212; 1970, ch. 110, § 6, p. 269, was repealed by § 1 of S.L. 1991, ch. 43.

**31-1613. Separability.** — If any section, subsection, sentence, clause or phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [1931, ch. 122, § 13, p. 210; I.C.A., § 30-1213.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 15 of S.L. 1931, ch. 122, providing for repeal of former and inconsistent laws, is as follows: "Chapter 232, the Idaho Session Laws, 1927, as amended by chapter 138 of the Idaho Session Laws, 1929, is hereby repealed; provided that as to the current fiscal year, the provisions thereof shall remain in full force and effect except as herein above provided. All other acts and parts of acts in conflict with this act are hereby repealed."

Section 14 of S.L. 1931, ch. 122, providing time for said act to take effect, is as follows: "Inasmuch as this act provides the method for making the estimates of receipts and expenditures of the various offices, departments, services, agencies and institutions of the

counties of this state, the preparation of a tentative budget and the adoption of a final budget, much of which information must be furnished before the beginning of the fiscal year, and inasmuch as this act could not be complied with for the current fiscal year which began on the second Monday of January, 1931, it is hereby declared the provisions of this act shall not be applicable to the current fiscal year, except as to those acts required to be done during the current fiscal year in order to prepare and submit the proposed budget for the ensuing fiscal year, and except, that this act shall be in force as to section 8 hereof [§ 31-1608] and as to the remedies provided for in section 7 hereof [§ 31-1607]."



CHAPTER 17

AUDITS OF COUNTY RECORDS

SECTION.

31-1701. Audit of county finances — Filing.  
31-1702 — 31-1707. [Repealed.]

**31-1701. Audit of county finances — Filing.** — The board of county commissioners of every county shall cause to be made, annually, a full and complete audit of the financial transactions of the county. Such audit shall be made by and under the direction of the board of county commissioners as required in section 67-450B, Idaho Code. [I.C., § 31-1701, as added by 1977, ch. 71, § 2, p. 134; am. 1993, ch. 327, § 14, p. 1186; am. 1993, ch. 387, § 3, p. 1417.]

STATUTORY NOTES

**Prior Laws.** — Former § 31-1701 which comprised S.L. 1935, ch. 80, § 1, p. 134 was repealed by S.L. 1977, ch. 71, § 1.

**Amendments.** — This section was amended by two 1993 acts — ch. 327, § 14, and ch. 387, § 3, both effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The 1993 amendment, by ch. 327, § 14, in the former third paragraph substituted “council” for “auditor”. However, ch. 387, § 3, deleted the former third paragraph of this section which read: “The board of county

commissioners shall file one (1) copy of such completed audit report with the legislative auditor within ten (10) days after its delivery by the contracting auditor.” Therefore, the former third paragraph has been deleted.

The 1993 amendment, by ch. 387, § 3, at the end of the first paragraph deleted “by an independent auditor, in accordance with generally accepted auditing standards and procedures.”; deleted the former second and third paragraphs; and at the end of this section added “as required in section 67-450B, Idaho Code.”

**31-1702 — 31-1707. Form of contract — Biennial audit — Expenses — Report — Neglect of duty. [Repealed.]**

STATUTORY NOTES

**Compiler's Notes.** — These sections which comprised 1935, ch. 80, §§ 2-7, p. 134;

am. 1970, ch. 110, §§ 7, 8, p. 269 were repealed by S.L. 1977, ch. 71, § 1.

CHAPTER 18

SHERIFF'S REVOLVING EXPENSE FUND

SECTION.

31-1801. Drawing expenses in advance.  
31-1802. Sheriff's revolving expense fund.  
31-1803. Audit and allowance of fund — Repayment of disallowed amount.

SECTION.

31-1804. Penalty for failure to make repayment.

**31-1801. Drawing expenses in advance.** — In each instance where the duties of the sheriff of any county require him, in his official capacity, to incur traveling and hotel expenses, training, or any duty requiring the need of a warrant, for himself or his deputies, he may, prior to the incurring thereof, make demand on the county auditor for a warrant on the county

treasurer and shall receive a sum not to exceed the amount set aside under the provisions of section 31-1802, Idaho Code, to be used for the purpose of defraying the whole or a part of said traveling and hotel expenses, training, or any duty requiring the need of a warrant. At the time demand is made on the county auditor for said warrant it shall be the duty of the sheriff to file with the auditor a statement specifying the general purpose for which the sum to be withdrawn is to be used. [1921, ch. 228, § 1, p. 516; I.C.A., § 30-1301; am. 1989, ch. 44, § 1, p. 56; am. 2003, ch. 40, § 2, p. 160.]

**31-1802. Sheriff's revolving expense fund.** — There shall be set aside by the board of county commissioners of each county upon the request of the sheriff thereof by order entered in their minutes a sum not exceeding ten thousand dollars (\$10,000), to be known as the "Sheriff's Revolving Expense Fund," in this chapter referred to as the fund, out of which fund any warrants drawn under the provision of this chapter shall be paid. The amount set aside for such fund shall be charged by the auditor against the sheriff and the board of county commissioners may require of the sheriff, a bond, in addition to his official bond, in such sum as the board may determine, to secure the repayment of such sum or sums withdrawn. The fund so set aside shall remain in the county treasury subject to withdrawal and reimbursement as herein provided. [1921, ch. 228, § 2, p. 516; I.C.A., § 30-1302; am. 1989, ch. 44, § 2, p. 56; am. 2003, ch. 40, § 3, p. 160.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S. L. 1921, ch. 228, §§ 1-4, compiled as §§ 31-1801 — 31-1804.

**31-1803. Audit and allowance of fund — Repayment of disallowed amount.** — After the performance of the duty, which necessitated the incurring of traveling and hotel expenses, training, or any duty requiring the need of a warrant, and the withdrawal of money has been made, as in this chapter provided, the board of county commissioners may require the sheriff to present his itemized claim for such traveling and hotel expenses, training, or any duty requiring the need of a warrant, as other claims are presented to the board of county commissioners, which body shall audit said claims for allowance or rejection. For those items allowed it shall be the duty of the board of county commissioners to order a warrant drawn, payable to the county treasurer for the total amount of the items allowed, which warrant shall be delivered to the county auditor. If any item of said claim is disallowed, the sheriff shall deposit with the county auditor an amount equal to the amount disallowed, together with any unexpended portion of the amounts withdrawn, which amounts, together with the warrant drawn in favor of the county treasurer for the amount of items allowed, shall be credited by the county auditor to the sheriff and shall be deposited by the auditor in the county treasury and placed to the credit of the fund. [1921, ch. 228, § 3, p. 516; I.C.A., § 30-1303; am. 1989, ch. 44, § 3, p. 56; am. 2003, ch. 40, § 4, p. 160.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-1802.

**31-1804. Penalty for failure to make repayment.** — Any sheriff failing to make repayment, as herein provided, to the said fund, shall be guilty of a misdemeanor. [1921, ch. 228, § 4, p. 516; I.C.A., § 30-1304.]

## STATUTORY NOTES

**Cross References.** — Penalty for misdemeanor when not otherwise provided, § 18-113.

## CHAPTER 19

## COUNTY BOND ISSUES

## SECTION.

31-1901. Commissioners may issue funding and refunding bonds.

31-1902. Prerequisites to issuance.

31-1903. Building, road, bridge, air navigation and open-space bonds.

## SECTION.

31-1904. Bond tax levies in new counties and segregated areas.

31-1905. Conduct of bond election.

31-1906 — 31-1909. [Repealed.]

**31-1901. Commissioners may issue funding and refunding bonds.**

— The board of county commissioners of any county in this state may issue negotiable coupon bonds of their county for the purpose of paying, redeeming, funding or refunding the outstanding indebtedness of the county, whether the indebtedness exists as a warrant indebtedness or bonded indebtedness. All such bonds shall be in the form and shall be issued, sold or exchanged and redeemed in accordance with the provisions of chapter 2 of title 57, known as the "Municipal Bond Law" of the state of Idaho, except where different provision is made herein. Provided, that the authority to fund warrant indebtedness shall extend only to the funding of warrant indebtedness existing as of the second Monday in January, 1933, and providing further that all taxes and other revenues which but for the funding of warrants would have been lawfully applicable to the redemption of the warrants so funded shall, as and when collected, be apportioned to and placed in the sinking fund for the payment of the interest and retirement of the principal of such bonds. Bonds issued for the purpose of funding warrants shall bear interest payable semiannually as the board of county commissioners may determine. [R.S., § 3602; am. 1895, p. 56, § 1; reen. 1899, p. 136, § 1; reen. R.C., § 1960; am. 1913, ch. 33, p. 132; compiled and reen. C.L., § 1960; C.S., § 3519; am. 1927, ch. 262, § 10, p. 546; I.C.A., § 30-1401; am. 1933, ch. 153, § 1, p. 231; am. 1970, ch. 176, § 1, p. 508.]

## STATUTORY NOTES

**Cross References.** — Building, road, and bridge bonds, § 31-1903.

Municipal bond law, § 57-201 et seq. Re-

funding bonds generally, § 57-501 et seq.

Refunding bonds in new counties, § 31-501 et seq.



**Compiler's Notes.** — Session Laws 1913, ch. 33, amending this section, was declared repealed, in so far as in conflict with S.L. 1913, ch. 58, § 99, by *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914). In subsequent compilations § 99 of S.L. 1913, ch. 58 was divided into several sections. That part of said

§ 99, declared to be in conflict with S.L. 1913, ch. 33, appears herein as § 63-907, as the same has been amended. However, § 31-1901 (this section) has since been amended so as to delete the conflicting provisions of S.L. 1913, ch. 33, and no conflict is now apparent between this section and § 63-911.

## JUDICIAL DECISIONS

### ANALYSIS

Conflicting statutes.

Construction.

Curative act.

Property bound.

Sections in *pari materia*.

What may be funded.

### Conflicting Statutes.

Where two conflicting acts upon the same subject-matter are passed at the same session of the Legislature, and their conflict is such that they cannot be harmonized and stand together, where one of them contains an emergency clause and the other does not, and the one containing the emergency clause was passed by both houses of the Legislature after the other, under such circumstances the act containing the emergency clause should prevail over the other. *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914), overruled on other grounds, *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

### Construction.

Issuance of refunding bonds to retire warrant indebtedness does not create indebtedness prohibited by Const., Art. 8, § 3. It merely changes the form of evidence of an existing indebtedness. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Funding bonds issued to retire county warrants are general obligations of the county so that the 10 mill clause in Const., Art. 7, § 15, has no application to such an issue. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

### Curative Act.

Since this and the following sections reenact the funding act of March 8, 1895, and the act of March 6, 1899, 1899, p. 368, validates bonds issued under the act of 1895; bonds issued under said last mentioned act are binding county obligations notwithstanding

defects in manner of passage of such act. *Crocheron v. Shea*, 6 Idaho 593, 57 P. 707 (1899).

### Property Bound.

Bonds issued under this section and § 31-1903 are binding obligations upon all the property in county. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

### Sections in *Pari Materia*.

This section and § 31-1902 relate to the same subject and are to be construed together. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

### What May Be Funded.

This section formerly authorized counties to fund not only their bonded indebtedness but also their warrant indebtedness. *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

Bonded indebtedness assumed by new county as its proportionate share of the indebtedness of the mother county may be refunded under this section. *Frazier v. Hastings*, 26 Idaho 623, 144 P. 1122 (1914).

Since the passage of §§ 31-501 — 31-505, however, newly created counties may fund their warrant indebtedness. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

**Cited in:** *Savings & Loan Ass'n v. Alturas County*, 65 F. 677 (C.C.D. Idaho 1893); *Blaine County v. Smith*, 5 Idaho 255, 48 P. 286 (1897); *Gilbert v. Canyon County*, 14 Idaho 429, 14 Idaho 437, 94 P. 1027 (1908); *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913); *Baker v. Gooding County*, 25 Idaho 506, 138 P. 342 (1914).

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, § 546 et seq.

**C.J.S.** — 20 C.J.S., *Counties*, §§ 218-226.

**A.L.R.** — *Validity of governmental borrowing or expenditure for purposes of acquiring, maintaining or improving stadium for use of professional athletic team*. 67 A.L.R.3d 1186.

**31-1902. Prerequisites to issuance.** — For the purpose of extending the time of payment of said outstanding indebtedness, or reducing the interest charged, or when the interests of the county require it, the board may issue said bonds in exchange for bonds, theretofore issued by the county or for valid and legal warrants of the county outstanding on the second Monday of January, 1933, and may do so by resolution of the board at a regular meeting thereof, and without a vote of the people. Before any bonds shall be issued or exchanged under this section, the board of county commissioners shall ascertain that the bonds or warrants the payment of which is to be extended, or which are to be taken in exchange for the new issue of bonds, are valid and legal obligations of the county, and their findings of fact shall be entered of record on the minutes of their proceedings at least ten (10) days before any exchange is made, as herein provided. The said board shall also, before issuing any bonds under this section, deduct from the total outstanding legal indebtedness of the county at the time of the issue of said bonds, the cash on hand in the treasury of the county, that is available for the payment of said legal indebtedness, or any part thereof, and the issue of bonds as in this section provided for, shall in no case exceed the aggregate or total legal indebtedness of the county then outstanding, less the cash on hand to be applied in payment and discharge of said indebtedness. [R.S., § 3603; am. 1895, p. 56, subd. 3603; reen. 1899, p. 136, § 1; reen. R.C., § 1961; compiled and reen. C.L., § 1961; C.S., § 3520; I.C.A., § 30-1402; am. 1933, ch. 153, § 2, p. 231.]

#### JUDICIAL DECISIONS

**Sections in *Pari Materia*.**

This section and § 31-1901 relate to the same subject and are to be construed together.

Lloyd Corp. v. Bannock County, 53 Idaho 478, 25 P.2d 217 (1933).

**31-1903. Building, road, bridge, air navigation and open-space bonds.** — When the interests of the county require it and the board of commissioners of the county deem it for the public good to bond the county to fund or refund the outstanding obligations or indebtedness of the county or bond the county for the purpose of acquiring funds for purchasing a site and erecting a courthouse and jail, a public auditorium or a jail thereon, or for the construction or repair of roads or bridges, or to assist any city or village in said county in constructing a free bridge over any navigable stream within, or partly within, or adjoining, the limits of any such city or village, or for purchasing, improving and equipping air navigation facilities as defined in chapter 4, title 21, Idaho Code, which facilities may be wholly or partly within or without the limits of such county, or wholly or partly within or without the state of Idaho, or for purchasing public open-space land and/or easements for scenic and recreational purposes, or for any one (1) or more said purposes, and the indebtedness or liability of the county that may be created by the bonding, funding or refunding aforesaid, or in purchasing a site and erecting a courthouse and jail, a public auditorium or a jail thereon, and for the construction or repair of roads or bridges, or for assisting any city or village in the construction of any such free bridge as

aforesaid, or for purchasing, improving and equipping air navigation facilities, or for purchasing public open-space land and/or easements for scenic and recreational purposes, or for any one (1) or more of said purposes, exceeds the income or revenue of the county for that year, the board of commissioners may issue bonds of the county as provided by sections 31-1901 and 31-1902, Idaho Code, and by the "municipal bond law" of the state of Idaho: provided, that the issuance of such bonds, except funding or refunding bonds, be first authorized by a vote of two-thirds ( $\frac{2}{3}$ ) of the qualified electors of the county, voting at an election held, subject to the provisions of section 34-106, Idaho Code, for that purpose, as hereinafter provided and as provided in the "municipal bond law" and, provided, further, that before the board of county commissioners shall issue any bonds to fund or refund the indebtedness of the county as in the section provided, they shall deduct from the legal indebtedness of the county, at the time of the issue of said bonds, the cash on hand in the county treasury applicable to the discharge of said indebtedness, and may issue bonds for the remainder of the indebtedness. [R.S., § 3604; am. 1895, p. 56, § 1; reen. 1899, p. 136, § 1; am. 1899, p. 443, § 1, subd. 3604; reen. R.C. & C.L., § 1962; C.S., § 3521; am. 1927, ch. 262, § 11, p. 546; I.C.A., § 30-1403; am. 1955, ch. 239, § 1, p. 537; am. 1967, ch. 59, § 1, p. 122; am. 1995, ch. 118, § 31, p. 417; am. 1999, ch. 125, § 1, p. 365.]

### STATUTORY NOTES

**Cross References.** — Highway districts, bonds, § 40-1101.

Highway districts, bond elections, § 40-1105.

Municipal bond law, § 57-201 et seq.

**Effective Dates.** — Section 2 of S.L. 1999, ch. 125 declared an emergency. Approved March 19, 1999.

### JUDICIAL DECISIONS

#### ANALYSIS

Conclusiveness of order.

Items included.

Prerequisites to issue.

Property bond.

Purpose.

#### Conclusiveness of Order.

Order of board of commissioners made in accordance with this section fixing the indebtedness of county and providing for the issuance of funding bonds, which is affirmed on appeal to district court, can not be thereafter collaterally attacked. *Blaine County v. Smith*, 5 Idaho 255, 48 P. 286 (1897).

#### Items Included.

Board of commissioners is authorized to issue bonds, when voted by electors qualified to vote at such election, to cover the costs and expense of superintending construction of bridge, as the work of superintending is a part of the construction. *Gilbert v. Canyon County*, 14 Idaho 429, 14 Idaho 437, 94 P. 1027 (1908).

Under provisions of highway district law,

board of county commissioners can not legally call an election for the voting of highway bonds with an arrangement for apportionment of proceeds among the several highway districts of county. *Baker v. Gooding County*, 25 Idaho 506, 138 P. 342 (1914).

#### Prerequisites to Issue.

To authorize issuance of municipal coupon bonds, board of county commissioners should find, and record should show, a substantial compliance with each step required by the statute. *Gilbert v. Canyon County*, 14 Idaho 429, 14 Idaho 437, 94 P. 1027 (1908).

#### Property Bond.

Bonds issued under this section and § 31-1901 are binding obligations upon all the



property in the county. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

**Purpose.**

Word "purpose" applies only to those purposes set forth in the statute and not to specific works or construction which may be carried on under one of these main purposes. *Independent Hwy. Dist. No. 2 v. Ada County*,

24 Idaho 416, 134 P. 542 (1913).

This section recites the separate, different, distinct, and various purposes contemplated by Const., Art. 8, § 3. *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913).

**Cited in:** *Andrews v. Board of County Comm'rs*, 7 Idaho 453, 63 P. 592 (1900).

**31-1904. Bond tax levies in new counties and segregated areas. —**

Should any part of a county that has incurred a bonded indebtedness be cut off and annexed to another county, or erected into a new or separate county, the assessor of the county to which the segregated portion is attached, or the assessor of the new county created as aforesaid, shall, upon notice from the board of county commissioners of the original county from which such segregated portion was detached, given at the regular session of the board when county and state taxes are levied, collect in said segregated territory, and in addition to the other taxes collected by him for county and state purposes, and at the same time and in the same manner, the tax levied by said board of commissioners as herein provided; and the laws of the state relating to the levy and collection of taxes, and prescribing the powers, duties and liabilities of officers charged with the collection and disbursement of the revenue arising from taxes, are made applicable to this article. The money collected by the assessor as aforesaid shall be paid over by the treasurer of the county collecting it to the treasurer of the county losing the said territory, and for the purposes herein directed, but such segregated territory so attached to another county, or erected into a new county, shall be relieved of the annual tax, levied as provided in the foregoing section, when the county acquiring the same, or the new or separate county, pays to the county losing the territory, that proportion of the whole indebtedness, together with legal interest thereon, that the assessed value of property in the segregated territory bears to the assessed value of the property in the whole county, as constituted before the division or segregation thereof. [R.S., § 3606; am. 1895, p. 56, subd. 3606; reen. 1899, p. 136, § 1; reen. R.C. & C.L., § 1964; C.S., § 3523; I.C.A., § 30-1404.]

**STATUTORY NOTES**

**Cross References.** — Refunding bonds in new counties, § 31-501 et seq.

**JUDICIAL DECISIONS**

**Construction.**

Where county is enlarged by annexing a portion of another county, the annexed portion is liable to pay its proportionate share of the indebtedness of county to which it is annexed. Under provisions of this section all taxable property subsequently brought into

county is liable for its proportionate share of such indebtedness. *Blake v. Jacks*, 18 Idaho 70, 108 P. 534 (1910).

**Cited in:** *Savings & Loan Ass'n v. Alturas County*, 65 F. 677 (C.C.D. Idaho 1893); *Shoshone County v. Profit*, 11 Idaho 763, 84 P. 712 (1906).

**31-1905. Conduct of bond election.** — If the question of bonding the county as herein provided is submitted to the voters, the election shall be held as provided in section 34-106, Idaho Code, and shall be conducted in all respects in conformity with title 34, Idaho Code. The number of qualified electors of the county voting at such bond election shall be solely determined by the number of votes cast on the specific question of bonding the county. [I.C., § 31-1905, as added by 1988, ch. 278, § 2, p. 909; am. 1993, ch. 313, § 2, p. 1157; am. 1995, ch. 118, § 32, p. 417.]

### STATUTORY NOTES

**Cross References.** — Publication of notices, § 60-109.

Qualifications of electors, Const., art. 6, § 2; § 34-402.

**Effective Dates.** — Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

### JUDICIAL DECISIONS

#### ANALYSIS

Notice.

—Posting.

—Provisions mandatory or directory.

—Sufficiency.

**Notice.**

—**Posting.**

Statute does not require proof of affidavit of posting of notices to be filed with board of county commissioners. Commissioners may have other means of establishing such fact. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

Statute does not specify by whom notices should be posted. They may be posted by private citizens as well as by officers. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

Requirement that notice shall be posted at least twenty days before election can not be substantially complied with by posting for a less number of days. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

—**Provisions Mandatory or Directory.**

Statutory directions as to time and manner of giving notice are mandatory upon officer charged with duty of calling election and will be strictly upheld in direct action instituted before election. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

After election has been held, requirements as to notice of election are considered directory unless it appears that failure to give notice has prevented fair expression of will of voters, or unless statute contains provision that failure to give notice for statutory period will render election void. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

Statutory directions as to the time and

manner of giving notice of elections are mandatory upon the officers charged with the duty of calling the election, and will be upheld strictly in a direct action instituted before an election; but after an election has been held, such statutory requirements are directory, unless it appears that the failure to give notice for the full time specified by the statute has prevented electors from giving a full and free expression of their will at the election, or unless the statute contains a further provision, the necessary effect of which is that failure to give notice for the statutory time will render the election void. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

Where electors were not prevented from fully and freely expressing their will at a special bond election by failure to post in precincts two notices of such election, after the election had been held, the requirements of this section as to the posting of two notices was held to be directory and not mandatory. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

—**Sufficiency.**

In notice of bond election for road and bridge purposes, it is not necessary to designate what portion will be spent for roads and what for bridges, nor to specify the particular roads or bridges. *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913).

Designation of place in notice as "the usual voting place" is sufficient where it appears

that there has been no change in boundaries of precinct in seven years. *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562 (1921).

**Cited in:** *Gilbert v. Canyon County*, 14

Idaho 429, 14 Idaho 437, 94 P. 1027 (1908); *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971).

**31-1906 — 31-1909. Conduct of election — Officers of election — Form of ballot — Voting on bonds at general election. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — These sections, which comprised 1895, p. 56, subd. 3611 — 3614; reen. 1899, p. 136, § 1; reen. R.C. &

C.L., §§ 1969 — 1972; C.S., §§ 3528 — 3531; I.C.A., §§ 30-1406 — 30-1409, were repealed by S.L. 1988, ch. 278, § 1.

**CHAPTER 20**

**COUNTY OFFICERS IN GENERAL**

**SECTION.**

- 31-2001. County officers enumerated.
- 31-2002. [Repealed.]
- 31-2003. Appointment of deputies.
- 31-2004. Deputies — Appointment during absence of officers.
- 31-2005. Failure to appoint deputy during absence.
- 31-2006. Designation of senior deputy.
- 31-2007. Appointment to be documented and filed.
- 31-2008. Use of official name includes deputies.
- 31-2009. Offices to be kept at the county seat — Office hours.

**SECTION.**

- 31-2010. Bond liable for penalties.
- 31-2011. Officers may administer oaths.
- 31-2012. Application of campaign reporting law to certain county elections.
- 31-2013. Absence of officers from the state.
- 31-2014. Certain officers not to practice law.
- 31-2015. Bonds of officers — Amount of penalty.
- 31-2016. Bond of officers — Amount not fixed.
- 31-2017. Limitation on approval of claims in excess of levies.
- 31-2018. County officials — Limitation on personal liability.

- 31-2001. County officers enumerated.** — The officers of a county are:
1. A sheriff.
  2. A clerk of the district court, who shall be ex officio auditor and recorder, and ex officio clerk of the board of county commissioners.
  3. An assessor.
  4. A prosecuting attorney.
  5. A county treasurer, who shall be ex officio public administrator and ex officio tax collector.
  6. A coroner.
  7. Three (3) members of the board of county commissioners. [R.S., § 2150; am. R.C., § 1973; compiled and reen. C.L., § 1973; C.S., § 3543; I.C.A., § 30-1501; am. 1963, ch. 88, § 1, p. 283; am. 1970, ch. 120, § 3, p. 284.]

**STATUTORY NOTES**

**Cross References.** — Assessor, § 31-2501 et seq.  
Auditor, § 31-2301 et seq.  
Clerk of district court, § 1-1001 et seq.  
Coroner, § 31-2801 et seq.

County commissioners, § 31-701 et seq.  
County officers enumerated, Const., art. 18, § 6.  
Emergency successors for officers, §§ 59-1406, 59-1407, 59-1409 — 59-1412.



Entries in public and official books prima facie evidence of facts stated therein, § 9-322.  
 Prosecuting attorney, § 31-2601 et seq.  
 Provisions applicable to all officers, tit. 59.  
 Recorder, § 31-2401 et seq.  
 Sheriff, § 31-2201 et seq.

Surveyor, § 31-2707.  
 Treasurer and tax collector, § 31-2101 et seq.  
 Workmen's compensation law applies, § 72-205.

## JUDICIAL DECISIONS

### ANALYSIS

Liability.  
 Recording officer.

#### Liability.

County officers are responsible to state and county for performance of official duties, but beyond this their liability can not be extended. *Youmans v. Thornton*, 31 Idaho 10, 168 P. 1141 (1917).

#### Recording Officer.

In seeking to compel defendant county auditor and recorder to accept for filing and recordation instruments designed for creation of tax liens and to issue writs of execution thereon, without payment of statutory fees, plaintiff state agency properly proceeded by writ of mandate. *Garrett v. Kline*, 87 Idaho 456, 394 P.2d 157 (1964).

Statutory provision that no county officer shall charge any fee against or receive any

compensation from the state in any action or proceeding in which the state is a party entitled the executive director of the employment security agency to file and record instruments creating tax liens under the Employment Security Law, and to issuance of execution thereon, without payment of statutory fees, as the procedure to collect delinquent contributions under that law constituted a "proceeding." *Garrett v. Kline*, 87 Idaho 456, 394 P.2d 157 (1964).

**Cited in:** *State v. Wharfield*, 41 Idaho 14, 236 P. 862 (1925); *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962); *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967); *State v. Goerig*, 121 Idaho 108, 822 P.2d 1005 (Ct. App. 1991).

## OPINIONS OF ATTORNEY GENERAL

A prosecuting attorney may not serve as a member of the state legislature; therefore, prior to assuming office as prosecutor, a legislator must resign from his or her legislative office. OAG 86-6.

While there is no statutory or constitutional prohibition that prevents a prosecutor from seeking a legislative seat, once elected the prosecutor would be required to make a choice between the two offices. OAG 86-6.

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, § 205 et seq.

**C.J.S.** — 20 C.J.S., *Counties*, §§ 97-142.

**A.L.R.** — *Validity, construction, and application of regulation regarding outside employment of governmental employees or officers*. 94 A.L.R.3d 1235.

### 31-2002. Other county officers. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised R.S., § 2150; am. R.C., § 1973; compiled and reen. C.L., § 1973; C.S.,

§ 3543; I.C.A., § 30-1501; am. 1959, ch. 221, § 10, p. 484; am. 1970, ch. 120, § 4, p. 284, was repealed by S.L. 1989, ch. 347, § 1.

**31-2003. Appointment of deputies.** — Every county officer except a commissioner may appoint as many deputies as may be necessary for the

prompt and faithful discharge of the duties of his office. [R.S., § 1815; am. 1888-1889, p. 13, § 1; reen. R.C. & C.L., § 1975; C.S., § 3545; I.C.A., § 30-1503; am. 1963, ch. 88, § 2, p. 283; am. 1970, ch. 120, § 5, p. 284.]

STATUTORY NOTES

**Cross References.** — Deputies to take and file oaths, § 59-406.

JUDICIAL DECISIONS

ANALYSIS

Authority to arrest.  
Deputy sheriff.  
Discretion of officer.  
Effect of constitutional provision.

**Authority to Arrest.**

The state presented undisputed evidence that the county sheriff appointed the officer as a special deputy sheriff and § 67-2337 provides that peace officers may perform their functions and duties outside of the limits of their respective city or political subdivision at the request of the chief law enforcement officer of another city or political subdivision; therefore, because officer's assistance was requested by the county sheriff, he had authority to stop and arrest defendant outside of the city limits and consequently, the arrest was valid. *State v. Goerig*, 121 Idaho 108, 822 P.2d 1005 (Ct. App. 1991).

**Deputy Sheriff.**

Deputy sheriff appointed without authority of board of county commissioners must show emergency before county is liable for salary. *Lansdon v. Washington County*, 16 Idaho 618,

102 P. 344 (1909); *Roberts v. Board of County Comm'rs*, 17 Idaho 379, 105 P. 797 (1908).

**Discretion of Officer.**

This section of the statute evidently places question as to whether one or more deputies are required to properly discharge the duties of the office wholly within discretion of officer making appointment. *Campbell v. Board of Comm'rs*, 5 Idaho 53, 46 P. 1022 (1896).

**Effect of Constitutional Provision.**

Constitution, Art. 18, § 6, does not repeal this section, but merely relieves county from payment of salaries to deputies other than those appointed by sheriff, auditor, recorder and clerk when such appointment is authorized, and the salaries of deputies are fixed by county commissioners. *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

**Cited in:** *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

OPINIONS OF ATTORNEY GENERAL

A court cannot simply appoint someone and call him or her a "marshal," thereby conferring peace officer status and enabling the person to carry a concealed weapon, serve arrest warrants, take custody of prisoners

and secure courtrooms; however, if the sheriff cooperates with the court, a marshal could be authorized to perform all the sheriff's court attendance duties, after being deputized by the sheriff. OAG 87-3.

**31-2004. Deputies — Appointment during absence of officers. —** Any county officer who may be granted leave of absence from the county wherein he resides and holds office, is required to appoint a deputy to act for him and in his place while absent. [1875, p. 822, § 1; R.S., § 1816; reen. R.C. & C.L., § 1976; C.S., § 3546; I.C.A., § 30-1504; am. 1989, ch. 347, § 2, p. 874.]

## STATUTORY NOTES

**Cross References.** — Leave of absence to officers, § 31-847.

## JUDICIAL DECISIONS

**Limited to County Officers.**

Only deputies of county officers whose salaries are a charge against county are those whom, from necessity, board has authorized

to be appointed, and their salaries fixed by the board. *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

**31-2005. Failure to appoint deputy during absence.** — Should any county officer who is granted leave of absence fail to appoint a deputy as required by this chapter, the act granting such leave of absence is null and void and the office vacant, and the vacancy must be filled by the board of county commissioners of the county. [1875, p. 822, § 2; am. R.S., § 1817; reen. R.C. & C.L., § 1977; C.S., § 3547; I.C.A., § 30-1505.]

**31-2006. Designation of senior deputy.** — When a county officer has more than one deputy he must designate one, by indorsement upon his appointment, as senior deputy, and in case of a vacancy in the office, by death, resignation, or otherwise, or of the officer's absence, or inability to perform the duties of his office, such deputy must continue to perform the duties of the office during such vacancy, absence or inability. [R.S., § 1818; reen. R.C. & C.L., § 1978; C.S., § 3548; I.C.A., § 30-1506.]

**31-2007. Appointment to be documented and filed.** — The appointment of deputies and subordinate officers must be documented and filed in the office of the county recorder. [1875, pp. 543, 556, §§ 6, 14; R.S., § 1819; reen. R.C. & C.L., § 1979; C.S., § 3549; I.C.A., § 30-1507; am. 1989, ch. 347, § 3, p. 874.]

## JUDICIAL DECISIONS

**De Facto Officer.**

Although deputy sheriff's loyalty oath and appointment were not filed in county recorder's office as required by § 59-406 and this section, deputy who had been appointed by sheriff who administered the official oath, who was in uniform and on duty in patrol car when he stopped and arrested motorist, was clothed with substantial indicia of authority

and was a de facto officer with the authority to stop such motorist and make an arrest and to testify regarding that arrest. *State v. Swenson*, 119 Idaho 706, 809 P.2d 1185 (Ct. App. 1991).

**Cited in:** *Gasper v. District Court*, 74 Idaho 388, 264 P.2d 679 (1953); *State v. Jaramillo*, 113 Idaho 862, 749 P.2d 1 (Ct. App. 1987).

**31-2008. Use of official name includes deputies.** — Whenever the official name of any principal officer is used in any law conferring power, or imposing duties or liabilities, it includes his deputies. [R.S., § 1820; am. and reen. R.C. & C.L., § 1980; C.S., § 3550; I.C.A., § 30-1508.]



JUDICIAL DECISIONS

ANALYSIS

Deputy prosecuting attorney.  
—Duties.

**Deputy Prosecuting Attorney.**

Grand jury proceeding was not invalid on the ground that deputy prosecuting attorney appeared at sessions without having a finding made by county commissioners that his appointment was necessary where he was duly appointed by prosecutor, oath taken, bond filed and approved by county commissioners since it could be presumed that his appointment was necessary as commissioners had approved appointment and bond. *Gasper v.*

*District Court*, 74 Idaho 388, 264 P.2d 679 (1953).

**—Duties.**

Where a duty or power is conferred by law on a prosecuting attorney in this state, the same duty or power is conferred upon his or her deputies. *State v. Jaramillo*, 113 Idaho 862, 749 P.2d 1 (Ct. App. 1987).

**Cited in:** *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

**31-2009. Offices to be kept at the county seat — Office hours.** — Sheriffs, recorders, treasurers, assessors, and in counties having a population of over 7,500, prosecuting attorneys must have their offices at the county seat, and keep them open for the transaction of business on such days and during such hours as the boards of county commissioners may prescribe. Provided, that in counties having a population of 7,500 or less, the prosecuting attorney must have an office at the county seat and must, by and with the approval of the board of county commissioners, establish such rules and hours for official business as may be necessary for the dispatch thereof. [R.S., § 1822; am. and reen. R.C. & C.L., § 1981; C.S., § 3551; I.C.A., § 30-1509; am. 1941, ch. 44, § 1, p. 97; am. 1947, ch. 194, § 1, p. 471; am. 1955, ch. 134, § 1, p. 273; am. 1957, ch. 134, § 1, p. 227; am. 1963, ch. 11, § 1, p. 22; am. 1970, ch. 120, § 6, p. 284.]

STATUTORY NOTES

**Cross References.** — Holidays enumerated, § 73-108.

**Effective Dates.** — Section 2 of S.L. 1963,

ch. 11 declared an emergency. Approved February 12, 1963.

JUDICIAL DECISIONS

**Judicial Notice of Closings.**

It is well recognized and subject to judicial notice that the county offices in this state are closed all day Saturday for the transaction of

business. *Cather v. Kelso*, 103 Idaho 684, 652 P.2d 188 (1982).

**Cited in:** *State v. McDermott*, 52 Idaho 602, 17 P.2d 343 (1932).

**31-2010. Bond liable for penalties.** — Whenever, except in criminal prosecutions, any special penalty, forfeiture or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon. [R.S., § 1823; reen. R.C. & C.L., § 1982; C.S., § 3552; I.C.A., § 30-1510.]

**31-2011. Officers may administer oaths.** — Every county officer may

administer and certify oaths. [R.S., § 1824; reen. R.C. & C.L., § 1983; C.S., § 3553; I.C.A., § 30-1511; am. 1970, ch. 120, § 7, p. 284.]

### JUDICIAL DECISIONS

**Cited in:** State v. Jones, 28 Idaho 428, 154 P. 378 (1916).

**31-2012. Application of campaign reporting law to certain county elections.** — The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6630, Idaho Code, insofar as they relate to the reporting of campaign contributions and expenditures are hereby made applicable to all elections for county elected officers in counties of the state, except that the clerk of the district court shall stand in place of the secretary of state. [I.C., § 31-2012, as added by 1991, ch. 93, § 1, p. 210; am. 2005, ch. 254, § 4, p. 777.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-2012, which comprised R.S., § 1825; modified by 1897, p. 306, § 1; compiled and reen. R.C. & C.L., § 1984; C.S., § 3554; am. 1929, ch. 92, § 1, p. 149; I.C.A., § 30-1514, was repealed by S.L. 1961, ch. 261, § 1.

**31-2013. Absence of officers from the state.** — No county officer must absent himself from the state for more than twenty (20) days unless with the consent of the board of county commissioners: providing however, that where any elective or appointive county officer is required to absent himself by reason of being a member of the armed forces of the nation or by reason of official call to service in civilian war work, the consent of the board of county commissioners shall not be necessary. [R.S., § 1826; am. 1897, p. 15, § 1; reen. 1899, p. 13, § 2; reen. R.C. & C.L., § 1985; C.S., § 3555; I.C.A., § 30-1513; am. 1943, ch. 66, § 2, p. 136; am. 1945, ch. 164, § 5, p. 245.]

### STATUTORY NOTES

**Cross References.** — Leave of absence granted by county commissioners, § 31-847. ch. 66 declared an emergency. Approved February 18, 1943.

**Effective Dates.** — Section 3 of S.L. 1943,

### JUDICIAL DECISIONS

**Cited in:** State v. McDermott, 52 Idaho 602, 17 P.2d 343 (1932).

**31-2014. Certain officers not to practice law.** — Sheriffs, clerks of courts and their deputies are prohibited from practicing law or acting as attorneys or counselors-at-law, or having as a partner a lawyer or any one who acts as such. Provided, however, any county elected official, with the approval of the board of county commissioners, may hire an attorney to act as his legal advisor. [R.S., § 1827; reen. R.C. & C.L., § 1986; C.S., § 3556; I.C.A., § 30-1514; am. 1989, ch. 347, § 4, p. 874.]

**31-2015. Bonds of officers — Amount of penalty.** — County, and district officers must execute official bonds in the following amounts:

1. County commissioners each in the sum of \$5000.
2. County treasurers each in double the probable amount of money that may at any time come into his hands as such treasurer, to be fixed by the board of county commissioners: provided, if surety bond be given as provided in section 41-2707, the bond need not exceed twenty-five per cent (25%) of the probable amount that may be at hand at any one time, but in no case to be less than \$10,000.
3. Sheriffs each in the sum of \$10,000.
4. Clerks of the district court each in the penal sum of \$5000, with two (2) sufficient sureties, to be approved by the judge of the district conditioned that he will faithfully perform the duties of his office and at all times account for and pay over all moneys in his hands as clerk; and the penalty of such bond may at any time be increased by the judge of the district. The clerk may require a bond from any deputy.
5. County recorders each in the sum of not less than \$5000 nor more than \$20,000, to be fixed by the board of county commissioners, and to cover his duties and liabilities as recorder, auditor and clerk of the board of county commissioners.
6. Assessors each in the sum of \$5000.
7. Tax collectors and license collectors each in the sum of not less than \$2000 nor more than \$50,000 to be fixed by the board of county commissioners.
8. Prosecuting attorneys each in the sum of \$2000.
9. Coroners each in the sum of \$1000.
10. Public administrators each in the sum of \$2000.
11. Constables in the sum of not less than \$500 nor more than \$1000, to be fixed by the board of county commissioners. [R.S., § 1828; am. and reen. R.C. & C.L., § 1987; am. 1919, ch. 125, § 1, p. 410; C.S., § 3557; I.C.A., § 30-1515; am. 1961, ch. 104, § 1, p. 153; am. 1963, ch. 88, § 3, p. 283; am. 1970, ch. 120, § 8, p. 284.]

#### STATUTORY NOTES

**Cross References.** — General provisions relating to surety bonds, § 59-801 et seq.

**Compiler's Notes.** — The § 41-2707 referred to in subdivision 2 of this section was repealed. A new § 41-2707 was enacted by S.L. 1973, ch. 135, § 4. For present law con-

cerning surety bonds see § 41-2604 et seq., and § 59-801 et seq.

**Effective Dates.** — Section 2 of S.L. 1961, ch. 104 declared an emergency. Approved March 6, 1961.

#### JUDICIAL DECISIONS

##### **Misconduct of Tax Collector.**

The office of treasurer does not include that of tax collector, and therefore treasurer's bond is not liable for the default and official mis-

conduct of the tax collector. *Fremont County v. Salisbury*, 48 Idaho 465, 285 P. 459 (1929).

**Cited in:** *Klam v. Boehm*, 72 Idaho 259, 240 P.2d 484 (1952).

**31-2016. Bond of officers — Amount not fixed.** — When the amount of the bond to be given by any county, district or precinct officer is not fixed



by law the amount must be fixed by the board of commissioners. [R.S., § 1829; reen. R.C. & C.L., § 1988; C.S., § 3558; I.C.A., § 30-1516.]

**31-2017. Limitation on approval of claims in excess of levies. —**

All county, town, municipal, road and school district officials who issue orders or warrants or approve bills or order county warrants to be drawn in excess of the levies made for the different county, town, municipal, road or school district funds shall be liable, both personally and on their official bonds for the payment of any such excess. [1915, ch. 116, p. 262; reen. C.L., § 1988a; C.S., § 3559; I.C.A., § 30-1517.]

**JUDICIAL DECISIONS**

**ANALYSIS**

Constitutionality.

Construction.

Ordinary expenses.

Personal liability of commissioners.

**Constitutionality.**

This section is not in conflict with Const., art. 8, § 3, and is not repealed by § 31-1607. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**Construction.**

A statute providing for the liability of county officials for the issuance of orders or warrants or approval of bills or orders for warrants in excess of levies was held not repealed by the county budget statute providing for budget appropriations, levies sufficient to raise required revenues and providing that expenditures, liabilities, or warrants issued in excess of budget appropriations shall be borne by county official involved, and not by county. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**Ordinary Expenses.**

A warrant redemption fund can not be used to pay necessary and ordinary expenses of county government. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**Personal Liability of Commissioners.**

County commissioners may not, without personal liability and liability on their bonds, allow claims for expenses of any kind incurred by their predecessors in excess of funds levied therefor plus accrued revenues, or order warrants to be drawn therefor. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

**31-2018. County officials — Limitation on personal liability. —**

County officials shall strictly account for all public moneys and property under their care and control while holding public office but shall not be personally liable for loss of any such public moneys or property when the cause of such loss is fire, flood, earthquake, or other natural or man-made disaster or when caused by theft, robbery, or the criminal conduct of another person who is not a county official or employee. Each county shall indemnify its officials and employees against all losses of public moneys or property, except those which are the result of negligence, gross negligence, or intentional conduct by the public official or employee, pursuant to the authority in the Idaho tort claims act. [I.C., § 31-2018, as added by 1988, ch. 4, § 1, p. 4.]

CHAPTER 21

COUNTY TREASURER AND TAX COLLECTOR

SECTION.  
31-2101. Duties of county treasurer.  
31-2102. Ex officio tax collector and ex officio public administrator.  
31-2103. Receipt of money.  
31-2104. Treasurer must receipt for money.  
31-2105 — 31-2111. [Repealed.]  
31-2112. Monthly settlements and state-ments — Annual settlement.  
31-2113. Quarterly report.  
31-2114. Neglect to settle or report.  
31-2115. Action against defaulting prosecut-ing attorney.  
31-2116. [Repealed.]  
31-2117. Disposal of money or property found on dead body.  
31-2118. Money found on dead bodies — De-

SECTION.  
mand by legal representa-tives.  
31-2119. Custody of county money.  
31-2120. Suspension of treasurer pending ac-tion.  
31-2121. Delivery of money and papers after death.  
31-2122. Inspection of books.  
31-2123. Examination of books.  
31-2124. Warrants of municipal or quasi-mu-nicipal corporations — Inter-est rate after presentment for payment.  
31-2125. Indorsement of warrants when not paid upon presentation.  
31-2126. Redeeming of registered warrants.

- 31-2101. Duties of county treasurer.** — The county treasurer must:
1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law.
  2. File and keep the certificates of the auditor delivered to him when moneys are paid into the treasury.
  3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disburse-ments were made by him.
  4. So keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.
  5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county auditor.
  6. Disburse the county moneys only on county warrants issued by the county auditor, based on orders of the board of commissioners or as otherwise provided by law. [1864, p. 475, §§ 111, 112; R.S., § 1840; reen. R.C., § 1991; am. 1913, ch. 128, § 1, p. 475; reen. C.L., § 1991; C.S., § 3562; I.C.A., § 30-1601.]

STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.  
Auditor's accounts with treasurer, § 31-2304.  
Auditor to draw warrants on treasurer, § 31-2301.

Cancellation or adjustment of taxes when county commissioners cooperate with federal department or agency in reclamation, drain-age and drought relief matters, §§ 31-901 — 31-906.  
Consolidation of counties, disposition of county moneys, § 31-415.

County division, transfer of tax collector's records, § 31-303.

County officers' salaries to be paid monthly from county treasury, § 31-3101.

Elementary school districts, treasurer for, § 33-509.

Ex officio public administrator, serving as, §§ 14-101 — 14-119.

Fees collected by clerk of district court to be paid over to county treasurer, § 31-3201.

Fees received by county officers, quarterly return to county treasurer, § 31-3101.

Forest reserve fund apportionment, division between school districts and road fund,

highway districts and road districts, § 57-1303.

Oaths, county officers may administer and certify, § 31-2011.

Office hours, § 31-2009.

Offices to be kept at county seat, § 31-2009.

Requirements of warrants, § 31-2302.

Salary of treasurer, § 31-3106.

School funds, duties of county treasurer in connection with, § 33-1013.

School warrants, presentment for payment, § 33-702.

**Compiler's Notes.** — Amendatory matter of S.L. 1913, ch. 128, § 1 was transferred in C.L. to § 31-2102.

## JUDICIAL DECISIONS

### ANALYSIS

Disbursements of public money.

Funds of irrigation district.

Funds protected by bond.

In general.

Legal standing.

### Disbursements of Public Money.

Officer disbursing public money to person not named in certificate upon which money was paid has burden of showing that person receiving payment had authority to so receive it. *Ada County v. Clark*, 43 Idaho 489, 253 P. 847 (1927).

Interest paid on estate's funds deposited by public administrator to his account as county treasurer is not payable only on county commissioners' orders, but belongs to owner of funds. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

### Funds of Irrigation District.

Provisions of this chapter do not apply to the deposit of irrigation district funds by its treasurer. In re *Bank of Nampa, Ltd.*, 29 Idaho 166, 157 P. 1117 (1916).

### Funds Protected by Bond.

Depository bond covers such funds as county treasurer is required by law to collect and it is immaterial that part of such funds may ultimately be consigned to some other department. *Washington County v. Weiser*

*Nat'l Bank*, 43 Idaho 600, 255 P. 310 (1927).

Money coming into county treasurer's hands pursuant to law providing for collection of funds of irrigation district are protected by his official bond. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

### In General.

Duties of treasurer under state depository law. *Blaine County v. Fuld*, 31 Idaho 358, 171 P. 1138 (1918).

### Legal Standing.

Elected officials (auditor, treasurer, sheriff, assessor) had standing to challenge whether a taxpayer coalition's referendum and initiative were the proper means to reject an ad valorem tax levy and establish a budget process for a county where the elected officials established that they would suffer a "distinct palpable injury" if the referendum and initiative pass because they would be unable to perform their lawful duties. *Weldon v. Bonner County Tax Coalition*, 124 Idaho 31, 855 P.2d 868 (1993).

**31-2102. Ex officio tax collector and ex officio public administrator.** — (1) The county treasurer is ex officio tax collector with duties relating to the collection of tax revenue as prescribed in title 63, Idaho Code.

(2) The county treasurer is ex officio public administrator and as such shall administer the estates of decedents who resided in the county at the time of death as prescribed in chapter 1, title 14, Idaho Code. [1913, ch. 128, § 1, p. 475; R.C., § 2079; compiled and reen. C.L., § 1991a; C.S., § 3563; I.C.A., § 30-1602; am. 1996, ch. 69, § 8, p. 213.]



## JUDICIAL DECISIONS

**Restatement of Constitutional Provision.**

Act upon which this section is based is simply a declaration of legislature for performance of duty which amendment to Const., art. 18, § 6, provides for, and adds nothing whatever to the amendment, and provides no

rules or means other than amendment itself provides for, with reference to transfer of ex officio duties of tax collector from assessor to county treasurer. It amounts to and is in fact an approval of the amendment. *Cleary v. Kincaid*, 23 Idaho 789, 131 P. 1117 (1913).

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Absence of heirs.

Fraud or deceit.

**Absence of Heirs.**

Only when there are no heirs who claim an estate does such property escheat to the state. *Connolly v. Probate Court*, 25 Idaho 35, 136 P. 205 (1913).

possession of property which no other rightful heirs may lawfully claim, such property escheats to the state. *Connolly v. Reed*, 22 Idaho 29, 125 P. 213 (1912).

**Fraud or Deceit.**

If parties through fraud or deceit obtain

**31-2103. Receipt of money.** — He must receive no money into the treasury unless documented by the certificate of the auditor. However, this procedure shall not prohibit electronic transfers followed by documented information as required by the county auditor and county treasurer. [R.S., § 1841; reen. R.C. & C.L., § 1992; C.S., § 3564; I.C.A., § 30-1603; am. 1990, ch. 76, § 1, p. 159.]

## JUDICIAL DECISIONS

**Liability on Bond.**

Surety on bond of clerk of district court as ex officio auditor and recorder was not liable for misapplication of moneys received by him from sheriff and deputy sheriff in violation of this section. *Power County v. Fidelity & Deposit Co.*, 44 Idaho 609, 260 P. 152 (1927).

Where there was no entry showing transfer of funds from collector's account to that of treasurer and no auditor's certificate authorizing such transfer, bond of treasurer is not liable for loss of such funds. *Fremont County v. Salisbury*, 48 Idaho 465, 285 P. 459 (1929).

**31-2104. Treasurer must receipt for money.** — When any money is paid to the county treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county auditor, who must charge the treasurer therewith and give the person paying the same a receipt. [1864, p. 475, § 113; R.S., § 1842; reen. R.C. & C.L., § 1993; C.S., § 3565; I.C.A., § 30-1604.]

## JUDICIAL DECISIONS

**Complaint in Action on Bond.**

Complaint in action on county treasurer's bond for negligently receiving worthless checks in settlement of tax collector's ac-

counts with county is insufficient where it merely alleges that tax collector had delivered to treasurer certain worthless checks on insolvent bank, and fails to allege that trea-

suror gave any receipt to collector for the checks. *Bingham County v. Woodin*, 6 Idaho 284, 55 P. 662 (1898).

**31-2105 — 31-2111. Redemption of warrants — Warrant not paid — County bulletin — Notice of payment — Publication of notice — Penalties — Interest noted on warrant. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — The following sections were repealed by S.L. 1994, ch. 35, § 1, effective July 1, 1994:

§ 31-2105, which comprised 1864, p. 475, § 115; R.S., § 1843; reen. R.C. & C.L., § 1994; C.S., § 3566; I.C.A., § 30-1605.

§ 31-2106, which comprised 1864, p. 475, § 116; R.S., § 1844; reen. R.C. & C.L., § 1995; C.S., § 3567; am. 1931, ch. 36, § 1, p. 71; I.C.A., § 30-1606; am. 1980, ch. 61, § 1, p. 118.

§ 31-2107, which comprised 1899, p. 434, § 1; reen. R.C. & C.L., § 1996; C.S., § 3568; I.C.A., § 30-1607.

§ 31-2108, which comprised 1899, p. 434, § 2; reen. R.C. & C.L., § 1997; C.S., § 3569; I.C.A., § 30-1608.

§ 31-2109, which comprised 1899, p. 434, § 3; reen. R.C., § 1998; am. 1909, p. 332, § 1; reen. C.L., § 1998; C.S., § 3570; I.C.A., § 30-1609; am. 1937, ch. 55, § 1, p. 71; am. 1984, ch. 111, § 1, p. 255.

§ 31-2110, which comprised 1899, p. 434, § 4; reen. R.C. & C.L., § 1999; C.S., § 3571; I.C.A., § 30-1610.

§ 31-2111, which comprised 1864, p. 475, § 118; R.S., § 1849; reen. R.C. & C.L., § 2000; C.S., § 3572; I.C.A., § 30-1611.

**31-2112. Monthly settlements and statements — Annual settlement.** — The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the auditor, on the first Monday of each month. For the purpose of making such settlement, he must make out a statement under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. In making such account, and for all other purposes, the treasurer shall report uncollected fees, personal property taxes or other revenue due but unpaid for a period of five (5) years and, at the end of such period, shall not be required to continue reporting such sums unless, in the opinion of the treasurer, such sums are collectible; provided, however, that this provision shall in no way alter or interfere with the obligation of the person or persons owing such amounts to pay the same. He must in such settlements, deposit all warrants redeemed by him and take the auditor's receipt therefor. He must also make a full settlement of all accounts with the auditor annually on the first Tuesday after the first Monday of October, in the presence of the commissioners who have a supervisory control thereof. [R.S., § 1850; modified by 1901, p. 233, § 174; compiled and reen. R.C. & C.L., § 2001; C.S., § 3573; I.C.A., § 30-1612; am. 1970, ch. 225, § 1, p. 633; am. 1976, ch. 45, § 21, p. 122.]

**STATUTORY NOTES**

**Cross References.** — Penalty for neglect to settle or report, § 31-2114.

**Effective Dates.** — Section 32 of S.L. 1976, ch. 45 read: "In order to provide an

orderly sequence for implementation of the provisions of this act: (a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27, and 31 shall be in full force and effect on and after January 1, 1977; (b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30

shall be in full force and effect on and after July 1, 1977; and (c) Sections 16, 17, 18, 19, 23, 24, 25, 28 and 29 shall be in full force and effect on and after October 1, 1977. Approved March 5, 1976.

**31-2113. Quarterly report.** — Each county treasurer must make a detailed report at every regular meeting of the board of commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county may clearly and distinctly appear. [R.S., § 1851; reen. R.C. & C.L., § 2002; C.S., § 3574; I.C.A., § 30-1613.]

#### STATUTORY NOTES

**Cross References.** — Joint statement by auditor and treasurer, publication of summary, § 31-2306.

**31-2114. Neglect to settle or report.** — If any county treasurer neglects or refuses to settle or report as required in the two (2) preceding sections, he forfeits and must pay to the county the sum of \$500.00 for every such neglect or refusal, and the board of commissioners must institute suits for the recovery thereof. [R.S., § 1852; reen. R.C. & C.L., § 2003; C.S., § 3575; I.C.A., § 30-1614.]

**31-2115. Action against defaulting prosecuting attorney.** — If the prosecuting attorney refuses or neglects to account for and pay over money received by him as required by law, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover, in such action, in addition to the amount so received, fifty per cent (50%) thereon by way of damages. [R.S., § 1853; am. and reen. R.C. & C.L., § 2004; C.S., § 3576; I.C.A., § 30-1615.]

**31-2116. Action against coroner or justice. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1864, p. 475, § 145; R.S., § 1854; reen. R.C. & C.L., § 2005; C.S., § 3577;

I.C.A., § 30-1616, was repealed by S.L. 1989, ch. 15, § 1.

**31-2117. Disposal of money or property found on dead body.** — The coroner or other public official must notify the county treasurer, within forty-eight (48) hours of knowledge of a death, of money or other property found on or with a dead body. The treasurer, upon receiving such funds must deposit them to the credit of the county. On receiving other property in like manner he must, within thirty (30) days, sell it at public auction upon reasonable public notice, and must in like manner deposit the proceeds to



the credit of the county. [1864, p. 475, § 146; R.S., § 1855; reen. R.C. & C.L., § 2006; C.S., § 3578; I.C.A., § 30-1617; am. 1996, ch. 69, § 9, p. 213.]

**31-2118. Money found on dead bodies — Demand by legal representatives.** — If the money in the treasury is demanded within six (6) years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of commissioners. [1864, p. 475, § 147; R.S., § 1856; reen. R.C. & C.L., § 2007; C.S., § 3579; I.C.A., § 30-1618.]

**31-2119. Custody of county money.** — The county treasurer must keep all moneys belonging to this state or to any county of this state in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe-keeping of the public moneys. [R.S., § 1857; reen. R.C. & C.L., § 2008; C.S., § 3580; I.C.A., § 30-1619.]

## JUDICIAL DECISIONS

### ANALYSIS

Agent of county.

Liability for general deposits.

#### **Agent of County.**

County treasurer is agent of county, and, where he deposits money in a bank which thereafter becomes insolvent and his checks thereon are not paid, county is liable for his wrongful acts. *Green v. Custer County*, 8 Idaho 721, 71 P. 115 (1902).

#### **Liability for General Deposits.**

Act of county treasurer in depositing county money in a bank on general deposit does not afford an action on his bond in absence of any showing of loss to county. *Bingham County v. Woodin*, 6 Idaho 284, 55 P. 662 (1898).

**31-2120. Suspension of treasurer pending action.** — Whenever an action based upon official misconduct is commenced against any county treasurer, the commissioners may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy. [1864, p. 475, § 122; R.S., § 1858; reen. R.C. & C.L., § 2009; C.S., § 3581; I.C.A., § 30-1620.]

**31-2121. Delivery of money and papers after death.** — In case of the death of any county treasurer, all official moneys, books, accounts, papers and documents shall be delivered to the treasurer's successor by the board of county commissioners. [1864, p. 475, § 123; R.S., § 1859; modified 1899, p. 405; compiled and reen. R.C. & C.L., § 2010; C.S., § 3582; I.C.A., § 30-1621; am. 1989, ch. 15, § 2, p. 17.]

**31-2122. Inspection of books.** — The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of

the board of commissioners and grand jury. [1864, p. 475, § 114; R.S., § 1860; reen. R.C. & C.L., § 2011; C.S., § 3583; I.C.A., § 30-1622.]

**31-2123. Examination of books.** — The treasurer must permit the county commissioners and auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting. [1864, p. 475, § 114; R.S., § 1861; reen. R.C. & C.L., § 2012; C.S., § 3584; I.C.A., § 30-1623.]

#### STATUTORY NOTES

**Cross References.** — County commissioner to audit accounts of county officers, § 31-809.

Joint quarterly statement by auditor and treasurer, § 31-2306.

Public depository law, § 57-101 et seq.

**31-2124. Warrants of municipal or quasi-municipal corporations — Interest rate after presentment for payment.** — The supervising board of every municipal or quasi-municipal corporation of any kind or class, specially chartered cities, school districts, of any kind or class, specially chartered school district, irrigation district, drainage district, stumpage district, highway district or other quasi-municipal district, now or hereafter created or organized and authorized by law to issue warrants for the payment of its indebtedness, and the board of county commissioners for any common or joint common school district within its county are hereby authorized by resolution, duly passed and approved at any regular or special meeting thereof, to fix the rate of interest, that warrants drawn by authority of such supervising board, or the county auditor for such common or joint common school district, shall draw after the same have been presented to the treasurer thereof for payment and not paid for want of funds. [1935, ch. 99, § 1, p. 208; am. 1980, ch. 61, § 2, p. 118.]

#### STATUTORY NOTES

**Cross References.** — City and village warrants, payment of claims, § 50-1018.

Drainage district warrants, §§ 42-2949, 42-2950.

Fire protection district warrants, § 31-1426.

Flood control districts, §§ 42-3101 — 42-3118.

Irrigation district warrants, § 43-322.

Local improvement district code, §§ 50-

1701 — 50-1727, 50-1738 — 50-1755, 50-1762 — 50-1770.

School district warrants, nonpayment for want of funds, indorsement, interest rate, § 33-702.

Stumpage district warrants, §§ 38-1019, 38-1020.

Water and sewer districts, §§ 42-3201 — 42-3227.

Watercourses and port districts, § 70-1709.

**31-2125. Indorsement of warrants when not paid upon presentation.** — When any warrant of any municipal or quasi-municipal corporation, specially chartered city, school district of any kind or class, specially chartered school district, drainage district, stumpage district, highway district, or other quasi-municipal district, now or hereafter created or organized, is presented for payment to the treasurer thereof, and is not paid for want of funds, the treasurer must indorse thereon "Not paid for want of funds," annexing the date of presentation, specifying the rate of interest that such warrant shall draw, after presentation, which rate shall be the rate

fixed in such resolution, sign his name thereto, and thereafter the said warrant shall draw interest at the rate specified in such indorsement. If the county treasurer is redeeming warrants for the districts listed above, the procedures used shall be those identified in section 31-1512, Idaho Code. [1935, ch. 99, § 2, p. 208; am. 1980, ch. 61, § 3, p. 118; am. 1994, ch. 35, § 3, p. 53.]

### STATUTORY NOTES

**Cross References.** — City and village warrants, payment of claims, § 50-1018.

Drainage district warrants, §§ 42-2949, 42-2950.

Fire protection district warrants, § 31-1426.

Flood control districts, §§ 42-3101 — 42-3118.

Local improvement district code, §§ 50-1701 — 50-1727, 50-1738 — 50-1755, 50-1762 — 50-1770.

School district warrants, nonpayment for want of funds, indorsement, interest rate, § 33-702.

Stumpage district warrants, §§ 38-1019, 38-1020.

Water and sewer districts, §§ 42-3201 — 42-3227.

Watercourses and port districts, § 70-1709.

**Effective Dates.** — Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

**31-2126. Redeeming of registered warrants.** — It is the duty of the county treasurer to comply with the requirements of section 31-1507, Idaho Code, if the board of county commissioners declares an emergency pursuant to section 31-1608, Idaho Code. [I.C., § 31-2126, as added by 1996, ch. 38, § 1, p. 102.]

## CHAPTER 22

### SHERIFF

#### SECTION.

31-2201. Process and notice defined.

31-2202. Duties of sheriff.

31-2203. Process returnable to another county.

31-2204. Return is prima facie evidence.

31-2205. Penalty for failure to return.

31-2206. Refusal to levy execution.

31-2207. Refusal to pay over money.

31-2208 — 31-2210. [Repealed.]

31-2211. Directions must be in writing.

31-2212. Office deemed vacant, when.

31-2213. Apparently good process must be executed.

31-2214. Must exhibit process.

31-2215. Sheriff is court crier.

#### SECTION.

31-2216. Service on sheriff.

31-2217. Coroner to execute certain process.

31-2218. Elisor, when appointed.

31-2219. Compensation for services to state.

31-2220. Incarceration of sheriff on arrest.

31-2221. Elisor has powers of sheriff.

31-2222. Termination of sheriff's powers.

31-2223. Delivery of property to successor.

31-2224. Delivery of property to successor — Written transfer and receipt.

31-2225. Completion of process.

31-2226. Refusal to deliver property.

31-2227. Enforcement of penal laws — Primary responsibility.

31-2228. Youth programs fund.

**31-2201. Process and notice defined.** — "Process" as used in this chapter includes all writs, warrants, summons and orders of courts of justice or judicial officers.

"Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board or officer, or when required by law to be served independently of such proceeding. [R.S., § 1870; am. and reen. R.C. & C.L., § 2023; C.S., § 3595; I.C.A., § 30-1701.]



## STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.

Coroner as substitute for sheriff, § 31-2806.

Deputies, §§ 31-2003 — 31-2008.

Idaho state police, § 67-2901 et seq.

Misbehavior in office a contempt, § 7-601.

Oaths, county officers may administer and certify, § 31-2011.

Office hours, § 31-2009.

Offices to be kept at county seat, § 31-2009.

Official bond, amount, § 31-2015.

Practicing law or having law partner prohibited, § 31-2014.

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

## JUDICIAL DECISIONS

### ANALYSIS

Chattel mortgage foreclosure.

Claim and delivery.

Disqualification of sheriff.

### Chattel Mortgage Foreclosure.

Affidavit and notice of foreclosure of a chattel mortgage are held to be process and as such will protect the sheriff in the execution thereof the same as he is protected in the service of an ordinary execution. *Blumauer-Frank Drug Co. v. Branstetter*, 4 Idaho 557, 43 P. 575 (1895).

### Claim and Delivery.

Statutory affidavit, order, and undertaking in claim and delivery constitute process under which sheriff takes property, making sheriff

liable for subsequent negligent loss. *Price v. Pace*, 50 Idaho 353, 296 P. 189 (1931).

### Disqualification of Sheriff.

Where sheriff is party to action, he is disqualified from serving papers therein. *Davis v. Bach*, 33 Idaho 551, 196 P. 673 (1921).

Where sheriff is disqualified from serving papers in action, his deputy is also disqualified. *Davis v. Bach*, 33 Idaho 551, 196 P. 673 (1921).

**Cited in:** *Lansdon v. Washington County*, 16 Idaho 618, 102 P. 344 (1909).

**31-2202. Duties of sheriff.** — The policy of the state of Idaho is that the primary duty of enforcing all penal provisions and statutes of the state is vested with the sheriff of each county as provided in section 31-2227, Idaho Code. The sheriff shall perform the following:

(1) Preserve the peace.

(2) Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense, unless otherwise provided by law.

(3) Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.

(4) Attend all courts, including magistrate's division of the district court when ordered by a district judge, at their respective terms held within his county, and obey the lawful orders and directions of the courts.

(5) Command the aid of as many inhabitants of the county as he may think necessary in the execution of these duties.

(6) Take charge of and keep the county jail and the prisoners therein.

(7) Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.

(8) Serve all process and notices in the manner prescribed by law.

(9) Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

(10) Perform such other duties as are required of him by law.

(11) Keep a record of all stolen cars reported within his county, which record shall contain the name of the motor vehicle, the engine number thereof, a complete description of such vehicle and such other information as may aid in the identification of the stolen car. Such record shall be open to public inspection during office hours, and immediately upon receiving a report of a stolen car the sheriff shall prepare and forward a copy thereof to the director of the Idaho state police and he shall also notify the director of the Idaho state police of any and all cars recovered.

(12) At the specific request of the governor or his designated agent prevent the unauthorized importation of wild omnivores or carnivores capable of causing injury to people or their property.

[(13)] Work in his county with the Idaho state police in the following respects:

(a) Require all persons using the highways in the state to do so carefully, safely and with exercise of care for the persons, property and safety of others;

(b) Safeguard and protect the surface and other physical portions of the state highways;

(c) Enforce all of the laws of the state enacted for the identification, inspection and transportation of livestock and all laws of the state designed to prevent the theft of livestock;

(d) Regulate traffic on all highways and roads in the state; and respond to calls following wrecks and make investigations relative thereto;

(e) Use whatever force is necessary to protect the public from wild or domestic omnivores or carnivores in a manner that is consistent with 50 C.F.R. section 17.84(i).

(14) Work in his county with the Idaho transportation department to give examinations for and sell drivers' licenses and identification cards.

(15) Expeditiously and promptly investigate all cases involving missing children when such cases are reported to him. [1864, p. 475, §§ 3-6; R.S., §§ 1871, 1888; am. and reen. R.C. & C.L., § 2024; C.S., § 3596; am. 1921, ch. 254, § 1, p. 546; I.C.A., § 30-1702; am. 1943, ch. 147, § 1, p. 293; am. 1951, ch. 183, § 18, p. 383; am. 1970, ch. 120, § 9, p. 284; am. 1985, ch. 149, § 1, p. 399; am. 1986, ch. 290, § 1, p. 732; am. 1989, ch. 14, § 1, p. 14; am. 1989, ch. 88, § 66, p. 151; am. 1998, ch. 110, § 2, p. 375; am. 2000, ch. 331, § 1, p. 1110; am. 2000, ch. 469, § 78, p. 1450.]

#### STATUTORY NOTES

**Cross References.** — Affrays, breaches of the peace, riots and insurrections, offenses and penalties, §§ 18-6401 — 18-6410; may command assistance in suppression, § 19-221.

Arrests, § 19-601 et seq.

Complaint and warrant of arrest, § 19-501 et seq.

Coroner to perform duties of sheriff when sheriff disqualified due to conflict of interest, §§ 31-2217, 31-2806.

County jail, sheriff to keep, § 20-601.

Court crier, sheriff to act as, § 31-2215.

Deputies, sheriff may be empowered by commissioners to appoint, Const., art. 18, § 6.

Election, § 34-618.

Fees of sheriff, § 31-3203.

Fish and game laws, enforcement, §§ 36-1301 — 36-1305.

Fresh pursuit law, § 19-701 et seq.

Law, practice of by sheriff forbidden, § 31-2014.

Livestock identification, inspection and transportation, tit. 25, chapters 11-16.

Misbehavior in office a contempt, § 7-601.

Motor vehicle operator's and chauffeur's licenses, § 49-301 et seq.

Nomination, §§ 34-701 — 34-708, 34-714 — 34-716.

Open season for fish and game, commission extending, sheriff to post notice, § 36-104.

Operation of vehicles on highways, § 49-501 et seq.

Personal property abandoned in hands of, sale and disbursement of proceeds, §§ 55-403, 55-404.

Recall elections, §§ 34-1701 — 34-1715.

Salary of sheriff, § 31-3106.

Sheriff revolving travel fund, § 31-1801 et seq.

Subpoena, service, I.R.C.P., Rule 45(c)(2).

Summons, service, I.R.C.P., Rules 4(c)(1) — 4(g).

Timber drifting upon land of another, sheriff to sell, § 38-803.

Weight, speed and tire regulations for vehicles on highways, § 49-901 et seq.

Witnesses, warrant of commitment for failure to appear, § 9-710.

**Amendments.** — This section was amended by two 1989\* acts — ch. 14, § 1, effective July 1, 1989 and ch. 88, § 66, effective April 1, 1990 — which appear to be compatible and have been compiled together.

The 1989 amendment, by ch. 14, inserted the first sentence, and substituted "shall perform the following:" for "must:" in the second sentence of the introductory paragraph; in subdivision 12 deleted "concurrently and cooperate" following "Work", and substituted "department of law enforcement" for "police"; and in subdivision 13 inserted "Work in his county with the Idaho transportation department to".

The 1989 amendment, by ch. 88, substituted "drivers" for "operator's and chauffeurs" in subdivision 13 of this section.

This section was amended by two 2000 acts — ch. 331, § 1 and ch. 469, § 78 both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 331, § 1, added subsection 12.; redesignated former subsections 12. through 14. as present subsections 13. through 15.; and added subdivision 13.(e).

The 2000 amendment, by ch. 469, § 78, redesignated former subsections 1. through 14. as present subsections (1) through (14); substituted "Idaho state police" for "department of law enforcement" throughout subsection (11); and in subsection (12) substituted "Idaho state police" for "Idaho state department of law enforcement".

**Compiler's Notes.** — The bracketed parentheses in subdivision [(13D)] were added by the compiler.

**Effective Dates.** — Section 2 of S.L. 1985, ch. 149 declared an emergency. Approved March 21, 1985.

Section 70 of S.L. 1989, ch. 88 as amended by § 1 of S.L. 1990, ch. 45 provided that the act would become effective July 1, 1990.

## JUDICIAL DECISIONS

### ANALYSIS

Appointment of bailiffs.

Driver's license.

Exercise of force by police.

Garnishment procedures.

Implied authority.

In general.

Legal standing.

Payment responsibility.

Safety.

Service by deputy.

### Appointment of Bailiffs.

Inherent power of courts of record to appoint bailiffs when exigency demands can not be questioned, but the exigency must arise from some peculiar emergency or where agency, vested by law with power to appoint, has neglected or refused to perform its duty.

State v. Leavitt, 44 Idaho 739, 260 P. 164 (1927).

### Driver's License.

Under the statutes relating to drivers' licenses, applications for chauffeurs' licenses are not made to the assessor but are made as



for instruction permits or operators' licenses. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

Under the statutes relating to drivers' licenses where examinations are to be made, the applications can be made to sheriffs only. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

Fees collected for drivers' licenses are "state money," even though collected by sheriffs, and are not "fees" within contemplation of constitutional provision relating to pay for county officers. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

Applications for renewals of drivers' licenses may be made either to the sheriff or directly to the department of law enforcement. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

The statutes relating to drivers' licenses do not take away from the sheriff and give to another officer any duty which the sheriff is constitutionally entitled to perform. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

### **Exercise of Force by Police.**

If a wife was guilty of misconduct which required her removal from a room at police headquarters, where the chief of police was questioning her husband who had been arrested, the chief of police was authorized, after requesting her to desist or leave the room and after giving her time to leave, to eject her without becoming liable for assault and battery, provided he used no more force than was necessary. Cornell v. Harris, 60 Idaho 87, 88 P.2d 498 (1939).

Words alone used by a wife in police headquarters, where her refusal to keep quiet while the chief of police was questioning her husband relative to a matter for which he had been arrested, would not justify either an assault or battery by the chief of police upon her, but such words and conduct could be considered in the mitigation of damages in an action for assault and battery. Cornell v. Harris, 60 Idaho 87, 88 P.2d 498 (1939).

### **Garnishment Procedures.**

County sheriffs were properly named as defendants in a suit challenging the constitutionality of Idaho's postjudgment garnishment procedures because they had the statutory duty to enforce and administer allegedly unconstitutional state statutes. Chaloux v. Killeen, 886 F.2d 247 (9th Cir. 1989).

### **Implied Authority.**

The statute does not enumerate the powers or place an exact limit on the authority which a police officer may lawfully exercise in the performance of his duties. In addition to the powers expressly conferred by statute, an officer has, by implication, such powers as are

necessary for due and efficient exercise of those expressly granted or such as may be fairly implied therefrom, and, where a power is given by statute, everything lawful and necessary to the effectual execution of the power is given by implication of law. Cornell v. Harris, 60 Idaho 87, 88 P.2d 498 (1939).

Sheriff having express authority under warrant to arrest a person charged with crime has also implied authority to call to his assistance such aid as is necessary efficiently to execute the express authority given him to arrest, and expense so incurred becomes a public charge. Lansdon v. Washington County, 16 Idaho 618, 102 P. 344 (1909).

### **In General.**

Sheriffs have the right and duty to determine what charge should be lodged against the accused. Cornell v. Harris, 60 Idaho 87, 88 P.2d 498 (1939).

The duties enumerated are not exclusive to the sheriff, for the legislature by statutory provision has imposed authority and duty for peace officers, including policemen, to make arrests and otherwise enforce the criminal laws of the state. Monson v. Boyd, 81 Idaho 575, 348 P.2d 93 (1959).

County sheriff did not have a duty to remove or warn of rocks on state highway; thus summary judgment was properly granted in favor of the sheriff in a negligence action brought by injured motorists. Udy v. Custer County, 136 Idaho 386, 34 P.3d 1069 (2001).

### **Legal Standing.**

Elected officials (auditor, treasurer, sheriff, assessor) had standing to challenge whether a taxpayer coalition's referendum and initiative were the proper means to reject an ad valorem tax levy and establish a budget process for a county where the elected officials established that they would suffer a "distinct palpable injury" if the referendum and initiative pass because they would be unable to perform their lawful duties. Weldon v. Bonner County Tax Coalition, 124 Idaho 31, 855 P.2d 868 (1993).

### **Payment Responsibility.**

When a person is in the sheriff's custody, whether indigent or not, the sheriff and custodial county are responsible for payment of medical expenses incurred. St. Alphonsus Regional Medical Ctr., Ltd. v. Killeen, 124 Idaho 197, 858 P.2d 736 (1993).

### **Safety.**

Deputy testified that, after the traffic stop had come to an end, when defendant was walking about conducting his inspection of the patrol car (ostensibly to identify same), he was in the traffic lane at times, and the deputy was concerned that an oncoming driver might not see him. Thus, the state

showed at trial that the deputy had a legitimate basis for concern about defendant's personal safety and the safety of approaching drivers; the deputy had the authority, and in fact the duty under § 31-2202(12), to safeguard persons using the highways and the jury could have properly found that the deputy was performing a "duty" of his office when he ordered defendant to return to his own car and that by refusing to comply, defendant violated § 18-705. *State v. Hallenbeck*, 141 Idaho 596, 114 P.3d 154 (Ct. App. 2005).

#### **Service by Deputy.**

Attempted service by sheriff's deputy of notice of appeal is ineffective when sheriff is disqualified because a party to the suit. *Davis v. Bach*, 33 Idaho 551, 196 P. 673 (1921).

**Cited in:** *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *State v. Wilkerson*, 114 Idaho 174, 755 P.2d 471 (Ct. App. 1988); *Murray v. Spalding*, 141 Idaho 99, 106 P.3d 425 (2005).

### **OPINIONS OF ATTORNEY GENERAL**

A sheriff is potentially liable for the wrongful conduct of court attendants appointed by a court when he or she fails to fulfill the statutory obligation to provide court attendants or negligently supervises such attendants. OAG 87-3.

It is the duty of the county sheriff to attend all courts located within his or her county. OAG 87-3.

### **RESEARCH REFERENCES**

**A.L.R.** — Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as result of failure to enforce law or arrest lawbreaker. 41 A.L.R.3d 700.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner. 41 A.L.R.3d 1021.

Civil liability of prison or jail authorities for self-inflicted injury or death of prisoner. 79 A.L.R.3d 1210.

Liability of governmental unit or its officers for injury to innocent pedestrian or occupant of parked vehicle, or for damage to such vehicle, as result of police chase. 100 A.L.R.3d 815.

Liability of governmental unit or its officers

for injury to innocent occupant of moving vehicle, or for damages to such vehicle, as result of police chase. 4 A.L.R.4th 865.

Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Inadequacy of price as basis for setting aside execution or sheriff's sale — modern cases. 5 A.L.R.4th 794.

Municipal or state liability for injuries resulting from police roadblocks or commandeering of private vehicles. 19 A.L.R.4th 937.

Liability for false arrest or imprisonment under warrant as affected by mistake as to identity of person arrested. 39 A.L.R.4th 705.

**31-2203. Process returnable to another county.** — When process or notices are returnable to another county, he may inclose such process or notice in an envelope addressed to the officer from whom the same emanated, and deposit it in the post-office, prepaying postage. [1864, p. 475, § 7; R.S., § 1872; reen. R.C. & C.L., § 2025; C.S., § 3597; I.C.A., § 30-1703.]

**31-2204. Return is prima facie evidence.** — The return of the sheriff upon process or notices is prima facie evidence of the facts in such return stated. [R.S., § 1873; reen. R.C. & C.L., § 2026; C.S., § 3598; I.C.A., § 30-1704.]

### **STATUTORY NOTES**

**Cross References.** — Sheriff's fee for making return of process, § 31-3203.

## JUDICIAL DECISIONS

## ANALYSIS

Disqualification of sheriff.  
Return presumed correct.

**Disqualification of Sheriff.**

Return of sheriff is not effective when he is disqualified to perform official acts to which he certifies. *Davis v. Bach*, 33 Idaho 551, 196 P. 673 (1921).

**Return Presumed Correct.**

Presumption of law is that an officer has performed his duty, and that return correctly states the facts relative to service of process,

until contrary is proved. *American Fruit Growers, Inc. v. Walmstad*, 44 Idaho 786, 260 P. 168 (1927); *McCall v. First Nat'l Bank*, 47 Idaho 519, 277 P. 562 (1929).

**Cited in:** *Long v. Burley State Bank*, 30 Idaho 392, 165 P. 1119 (1917); *Weil v. Defenbach*, 36 Idaho 37, 208 P. 1025 (1922); *Terry v. Terry*, 70 Idaho 161, 213 P.2d 906 (1950).

**31-2205. Penalty for failure to return.** — If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of \$200.00 and for all damages sustained by him. [1864, p. 475, § 6; R.S., § 1874; reen. R.C. & C.L., § 2027; C.S., § 3599; I.C.A., § 30-1705.]

## JUDICIAL DECISIONS

**Liability of Sureties.**

Penalty provided for in this section can be recovered against sheriff only; his sureties are

not liable therefor. *Robinson v. Kinney*, 3 Idaho 479, 31 P. 815 (1892).

**31-2206. Refusal to levy execution.** — If the sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property. [1864, p. 475, § 8; R.S., § 1875; reen. R.C. & C.L., § 2028; C.S., § 3600; I.C.A., § 30-1706.]

## STATUTORY NOTES

**Cross References.** — Levy of execution,  
§ 11-301 et seq.

## JUDICIAL DECISIONS

**Cited in:** *Blumauer-Frank Drug Co. v. Branstetter*, 4 Idaho 557, 43 P. 575 (1895).

**31-2207. Refusal to pay over money.** — If he neglects or refuses to pay over, on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees) the amount thereof, with twenty-five per cent (25%) damages and interest at the rate of ten per cent (10%) per month from the time of demand, may be recovered by such person. [1864, p. 475, § 9; R.S., § 1876; reen. R.C. & C.L., § 2029; C.S., § 3601; I.C.A., § 30-1707.]



## STATUTORY NOTES

**Cross References.** — County commissioner to audit accounts of county officers, § 31-809. Execution sales, § 11-302 et seq.

## JUDICIAL DECISIONS

## ANALYSIS

Demand necessary.  
Liability of sureties.

**Demand Necessary.**

In order to recover against sheriff under this section, it is incumbent upon plaintiffs to allege and prove a demand. *Robinson v. Kinney*, 3 Idaho 479, 31 P. 815 (1892).

which sheriff has received under an execution and which he has neglected to pay to person entitled thereto. *Robinson v. Kinney*, 3 Idaho 479, 31 P. 815 (1892).

**Liability of Sureties.**

Sheriff's sureties are liable for money

**31-2208 — 31-2210. Liability for escape, rescue — No action after recapture. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised 1864, p. 475, §§ 33-35; R.S., §§ 1877 — 1879; reen. R.C. & C.L., §§ 2030 — 2032; C.S., §§ 3602 — 3604; I.C.A., §§ 30-1708 — 30-1710, were repealed by S.L. 1989, ch. 14, § 2.

**31-2211. Directions must be in writing.** — No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney. [1864, p. 475, § 45; R.S., § 1880; reen. R.C. & C.L., § 2033; C.S., § 3605; I.C.A., § 30-1711.]

## JUDICIAL DECISIONS

**Instructions to Jury.**

In action against sheriff and his surety for failure of sheriff to levy upon and sell attached property, instructions that, if keeper was appointed at instigation of plaintiff, sheriff would not be liable for keeper's negligence

and that attaching creditor who undertakes to control acts of officer makes keeper his own agent were erroneous for not embracing provisions of this section. *Applebaum v. Stanton*, 47 Idaho 395, 276 P. 47 (1929).

**31-2212. Office deemed vacant, when.** — In addition to the events specified in section 59-901, Idaho Code, when the sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty (60) days, his office is vacant. [1864, p. 475, § 46; R.S., § 1881; reen. R.C. & C.L., § 2034; C.S., § 3606; I.C.A., § 30-1712; am. 1989, ch. 14, § 3, p. 14.]

**31-2213. Apparently good process must be executed.** — A sheriff, or other ministerial officer, is justified in the execution of, and must execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued. [1864, p. 475, § 48; R.S., § 1882; reen. R.C. & C.L., § 2035; C.S., § 3607; I.C.A., § 30-1713.]

## JUDICIAL DECISIONS

### ANALYSIS

Effect of death of creditor.  
Effect of writ of execution.  
Justification under process.  
Process presumptively good.  
Validity of writ.

#### Effect of Death of Creditor.

Sheriff does not lose authority to execute process of execution and effect sale thereunder by death of judgment creditor. *Hill v. Joseph*, 58 Idaho 267, 72 P.2d 283 (1937).

#### Effect of Writ of Execution.

The writ of execution is a direct command or order of the court to the sheriff to carry out the mandate of the execution. Until the execution is lawfully withdrawn from his possession, or direction is given by an authorized person that the progress of the execution be suspended, the officer to whom it is directed has authority to execute and return the same and make any entry thereon which the law authorizes. *Hill v. Joseph*, 58 Idaho 267, 72 P.2d 283 (1937).

#### Justification Under Process.

Process good on its face protects sheriff even though made on a void or irregular judgment; such process includes affidavit and notice for the foreclosure of a chattel mortgage. *Blumauer-Frank Drug Co. v. Branstetter*, 4 Idaho 557, 43 P. 575 (1895).

Officer who seeks to justify seizure of chattels under a writ of attachment must show a valid writ and existence of all the jurisdictional facts that must exist before writ can issue. *Beckstead v. Griffith*, 11 Idaho 738, 83 P. 764 (1906).

Process may have been procured through fraud or perjury, or a court which has ordered it may have committed the most serious errors or have exceeded its jurisdiction after once having exercised that jurisdiction, but if these facts do not appear on the face of process, if process is regular on its face and comes from a lawful authority, officer may execute it and legally justify his action. *Peterson v. Merritt*, 25 Idaho 324, 137 P. 526 (1913).

#### Process Presumptively Good.

Every intentment of the law is in favor of the regularity of the proceedings of sheriff under an attachment or execution and nothing but a wilful disregard of the rights of others will subject him to liability. *Roth v. Duvall*, 1 Idaho 149 (1866).

Sheriff cannot refuse to serve process regularly issued to him because in his opinion it is defective or irregular. *Roth v. Duvall*, 1 Idaho 149 (1866).

#### Validity of Writ.

A sheriff has an affirmative legal duty to execute a facially valid writ of execution, and is not required to go behind the writ to verify its validity. *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 979 P.2d 605 (1999).

**Cited in:** *Coombs v. Collins*, 6 Idaho 536, 57 P. 310 (1899).

**31-2214. Must exhibit process.** — The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein. [1864, p. 475, § 49; R.S., § 1883; reen. R.C. & C.L., § 2036; C.S., § 3608; I.C.A., § 30-1714.]

**31-2215. Sheriff is court crier.** — The sheriff in attendance upon court may, at the direction of the court, act as the crier thereof, call the parties and witnesses, and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other

matter under its direction. [1864, p. 475, § 50; R.S., § 1884; reen. R.C. & C.L., § 2037; C.S., § 3609; I.C.A., § 30-1715; am. 1988, ch. 229, § 3, p. 441.]

### STATUTORY NOTES

**Cross References.** — Sheriff to attend court and obey orders and carry out duties, § 31-2202.

**31-2216. Service on sheriff.** — Service of a paper, other than process, upon the sheriff, may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office. [1864, p. 475, § 12; R.S., § 1885; reen. R.C. & C.L., § 2038; C.S., § 3610; I.C.A., § 30-1716.]

**31-2217. Coroner to execute certain process.** — When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county. [1864, p. 475, § 54; R.S., § 1886; reen. R.C. & C.L., § 2039; C.S., § 3611; I.C.A., § 30-1717.]

### STATUTORY NOTES

**Cross References.** — Duties of coroner when sheriff disqualified due to conflict of interest, §§ 31-2806, 31-2807.

**31-2218. Elisor, when appointed.** — Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court, the judge thereof, or a magistrate judge, and denominated an elisor in the following cases:

1. When the sheriff and coroner are both parties.
2. When either of these officers is a party and the process is against the other; and,
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice or other cause would not act promptly or impartially.

When the process is delivered to an elisor he must execute and return it in the same manner as the sheriff is required to execute similar process. [1864, p. 475, §§ 57, 58; R.S., § 1887; reen. R.C. & C.L., § 2040; C.S., § 3612; I.C.A. § 30-1718; am. 1989, ch. 14, § 4, p. 14.]

### JUDICIAL DECISIONS

#### ANALYSIS

Appointment.

— Discretionary.

— Not authorized.

Disqualification of sheriff.



**Appointment.****—Discretionary.**

Granting or refusing of an application for appointment of elisor is within the discretion of court. *State v. Hendel*, 4 Idaho 88, 35 P. 836 (1894).

**—Not Authorized.**

Appointment of elisor to take charge of jury during progress of a criminal trial is not

within this section. *State v. Hendel*, 4 Idaho 88, 35 P. 836 (1894).

**Disqualification of Sheriff.**

Where sheriff is disqualified to serve jury process, elisor should be appointed, and neither sheriff nor his deputies should be permitted to serve the process. *State v. Barber*, 13 Idaho 65, 88 P. 418 (1907).

**31-2219. Compensation for services to state.** — When the sheriff or other officer is legally required to perform a service in behalf of the people of this state, which is not chargeable to his county or private person, his account and claim for compensation therefor must be filed with the board of examiners, who shall consider the same and report thereon to the legislature, at its first session after the rendition of such service, for its action. The board of examiners shall request an appropriation for such claim. If the legislature appropriates funds for such claim, the amount shall be paid by the board of examiners to the treasurer of the county of the sheriff or other officer who performed the services. [1875, p. 543, § 47; R.S., § 1889; compiled and reen. R.C. & C.L., § 2041; C.S., § 3613; I.C.A., § 30-1719; am. 1984, ch. 79, § 2, p. 146.]

**STATUTORY NOTES**

**Cross References.** — Board of examiners, members, powers and duties, Const., Art. 4, § 18.

**31-2220. Incarceration of sheriff on arrest.** — If the sheriff, on being arrested by a coroner, or if the sheriff or coroner on being arrested by an elisor, or if another person in an action in which both the sheriff and coroner are plaintiffs upon an order of arrest in a civil action, neglect to give bail or make a deposit of money instead thereof, or if the sheriff be arrested on execution against his body, or on a warrant of attachment, he or they must be confined in a house other than that of the sheriff, or the county jail, in the same manner as the sheriff is required to confine a prisoner in the county jail. The house in which he is thus confined thereupon becomes for that purpose the county jail. [1864, p. 475, § 59; R.S., § 1890; reen. R.C. & C.L., § 2042; C.S., § 3614; I.C.A., § 30-1720.]

**31-2221. Elisor has powers of sheriff.** — An elisor appointed to execute process and orders in the cases mentioned in this chapter, is invested with the powers, duties and responsibilities of the sheriff, in the execution of the process, or orders, and in every matter incidental thereto. [1864, p. 475, § 60; R.S., § 1891; reen. R.C. & C.L., § 2043; C.S., § 3615; I.C.A., § 30-1721.]

**31-2222. Termination of sheriff's powers.** — When a new sheriff is elected, and has qualified and given the security required by law, the county recorder must give a certificate of that fact, under his seal of office, upon the

service of which on the former sheriff his powers cease, except as otherwise provided in this chapter. [1864, p. 475, § 36; R.S., § 1892; reen. R.C. & C.L., § 2044; C.S., § 3616; I.C.A., § 30-1722.]

**31-2223. Delivery of property to successor.** — Within three (3) days after the service of the certificate upon the former sheriff, he must deliver to his successor:

1. The jail of the county, with its appurtenances and the property of the county therein.

2. The prisoners then confined in the county jail.

3. The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners.

4. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed.

5. All executions, attachments and final process, which have been partially executed, with his return thereon showing to what extent he has executed the same. [1864, p. 475, § 37; R.S., § 1893; reen. R.C. & C.L., § 2045; C.S., § 3617; am. 1921, ch. 138, § 1, p. 323; I.C.A., § 30-1723.]

**31-2224. Delivery of property to successor — Written transfer and receipt.** — He must also, at the same time, deliver to the new sheriff a written transfer of the property. The new sheriff must thereupon acknowledge, in writing on a duplicate of the transfer, the receipt of the property. [1864, p. 475, § 38; R.S., § 1894; reen. R.C. & C.L., § 2046; C.S., § 3618; I.C.A., § 30-1724; am. 2005, ch. 291, § 1, p. 928.]

**31-2225. Completion of process.** — The new or succeeding sheriff must complete the execution of all writs and process delivered to him by his predecessor in office as partially executed, in like manner and with like effect as he might execute writs or process delivered to him in the first place. [1864, p. 475, § 39; R.S., § 1895; reen. R.C. & C.L., § 2047; C.S., § 3619; am. 1921, ch. 138, § 2, p. 323; am. 1923, ch. 19, § 1, p. 19; I.C.A., § 30-1725.]

#### STATUTORY NOTES

**Cross References.** — Execution of sheriff's deed by successor in office, § 11-311.

**31-2226. Refusal to deliver property.** — If the former sheriff refuses or neglects to deliver to his successor the jail, process, papers and prisoners in his charge, the new sheriff may, notwithstanding, take possession of the jail, and of the prisoners confined therein, and the magistrate judge, may, upon application, order the delivery of the process and papers. [1864, p. 475, § 40; R.S., § 1896; reen. R.C. & C.L., § 2048; C.S., § 3620; I.C.A., § 30-1726; am. 1989, ch. 14, § 5, p. 14.]

**31-2227. Enforcement of penal laws — Primary responsibility. —**

Irrespective of police powers vested by statute in state, county, and municipal officers, it is hereby declared to be the policy of the state of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties. When in the judgment of such county officers, they need assistance from municipal peace officers within the county, they are authorized and directed to call for such and such local officers shall render such assistance.

When in the judgment of such county officers, advice and/or assistance is needed which is not available in the county, the sheriff and/or the prosecuting attorney are directed to call upon the Idaho state police for such advice and assistance and the department shall render such cooperative service. Whenever in the opinion of the governor any peace officer of this state refuses to offer assistance when requested to do so, or refuses to perform any duty enjoined upon him by the penal statutes of this state, the governor shall direct the attorney general to commence action under chapter 41, title 19, Idaho Code, to remove such officer from office.

When in the judgment of the governor the penal laws of this state are not being enforced as written, in any county, or counties, in this state, he may direct the director of the Idaho state police to act independently of the sheriff and prosecuting attorney in such county, or counties, to execute and enforce such penal laws. In such an instance, the attorney general shall exclusively exercise all duties, rights and responsibilities of the prosecuting attorney. [1951, ch. 196, § 1, p. 420; am. 1974, ch. 27, § 77, p. 811; am. 1989, ch. 14, § 6, p. 14; am. 1998, ch. 246, § 1, p. 808; am. 2000, ch. 469, § 79, p. 1450.]

**STATUTORY NOTES**

**Effective Dates.** — Section 196 of S.L. 1974, ch. 27 provided that the act be in full force and effect on and after July 1, 1974.

**JUDICIAL DECISIONS****ANALYSIS**

Attorney general.

Powers of other peace officers.

**Attorney General.**

Through a series of statutes, the state has made it the primary duty of the county prosecutor to enforce the state penal laws, and the attorney general is not authorized to assume the full duties of prosecution from the county prosecutor. *Newman v. Lance*, 129 Idaho 98, 922 P.2d 395 (1996).

**Powers of Other Peace Officers.**

The effect of this statute is to place the duty

of criminal law enforcement primarily upon the sheriff and prosecuting attorney, but it does not destroy or attempt to destroy the statutory or implied constitutional authority and duty of other peace officers. *Monson v. Boyd*, 81 Idaho 575, 348 P.2d 93 (1959).

**Cited in:** *Clark v. Meehl*, 98 Idaho 641, 570 P.2d 1331 (1977); *Shouse v. Ljunggren*, 792 F.2d 902 (9th Cir. 1986).



OPINIONS OF ATTORNEY GENERAL

The provisions of this section and §§ 31-2604 and 50-208A are fully applicable to the provisions of §§ 18-605, 18-606 and 18-607 making certain violations criminal offenses. Thus, prosecutions for unlawful abortions un-

der Idaho Code §§ 18-605 and 18-606, which are declared to be felonies, would be the responsibility of the prosecuting attorney. OAG 93-1.

**31-2228. Youth programs fund.** — The sheriff of each county is authorized to create a self-perpetuating youth programs fund for use in implementation of prevention and early intervention programs for at-risk youth in the county, including but not limited to: (1) providing mentoring programs, (2) creating safe places and structured activities in nonschool hours, (3) fostering good health, (4) developing effective education opportunities for marketable career skills, and (5) providing an opportunity for youth to give back to their community. Proceeds from the fee imposed pursuant to section 49-418B, Idaho Code, transferred to the county, shall be deposited to the fund. In addition, the sheriff may accept gifts and donations from individuals and private organizations or foundations, or appropriations from public entities. The fund shall be subject to yearly audit authorized by the board of county commissioners. [I.C., § 31-2228, as added by 2000, ch. 306, § 1, p. 1042.]

STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 2000, ch. 306 declared an emergency. Approved April 14, 2000.

CHAPTER 23

COUNTY AUDITOR

SECTION.

- 31-2301. Auditor to draw warrants.
- 31-2302. Requirements of warrants.
- 31-2303. Settlement of debts to county.
- 31-2304. Accounts with treasurer.
- 31-2305. Warrant blanks — Registration.
- 31-2306. Joint statement by auditor and treasurer — Publication of summary.

SECTION.

- 31-2307. Annual statement of financial condition of county.
- 31-2308. Other duties of auditor.
- 31-2309. Filing and recording bond of recorder and auditor.

**31-2301. Auditor to draw warrants.** — The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto, in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal. [1875, p. 556, § 26; R.S., § 2005; reen. R.C. & C.L., § 2052; C.S., § 3624; I.C.A., § 30-1801.]

## STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.

Action in name of county auditor for foreclosure of tax lien, state stenographer's fees not to be charged by clerk of district court, § 31-3201.

Cancellation or adjustment of taxes where county commissioners cooperate with federal department or agency in reclamation, drainage, and drought relief matters, §§ 31-901 — 31-906.

Clerk of district court ex officio county auditor, § 31-2001.

Consolidation of counties, filing of petition with county auditor, § 31-407.

Consolidation of counties, transfer of records, § 31-414.

County auditor as ex officio clerk of county board to record reports of county treasurer, § 31-708.

County commissioner to audit accounts of county officers, § 31-809.

County division, transfer of records, § 31-301.

County officers' salaries to be paid upon warrants of county auditor, § 31-3101.

Deputies, §§ 31-2003 — 31-2008.

Duplicate receipt of county prosecutor for fines, forfeitures, penalties or costs to be filed with auditor, § 31-2604.

Ex officio clerk of the board of commissioners, § 31-707.

Fees of auditor, § 31-3207.

Money received into county treasury must be certified by auditor, § 31-2103; treasurer's receipt to be deposited with auditor, § 31-2104.

Oaths, county officers may administer and certify, § 31-2011.

Official bond, amount to be fixed by county commissioners, § 31-2016.

Prosecuting attorney to settle monthly with auditor, § 31-2604.

Salary of auditor, § 31-3106.

School warrants, duty to draw, §§ 33-702, 33-1013.

Treasurer's books may be audited and his money counted at any time, § 31-2123.

Treasurer to keep certificates of auditor delivered to him when moneys are paid into treasury, § 31-2101.

Treasurer to settle accounts with auditor monthly, § 31-2112.

## JUDICIAL DECISIONS

## ANALYSIS

County warrants not negotiable paper.  
Sums allowed by law.

**County Warrants Not Negotiable Paper.**

County warrants are not negotiable paper in the sense that transferee for value is protected from defense available against original payee. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Where order of county commissioners directing auditor to issue warrants is reversed, there is total failure of consideration from seller of such warrants. *Milner v. Pelham*, 30 Idaho 594, 166 P. 574 (1917).

Where warrants originally valid became invalid by reversal of order of county commis-

sioners, provisions of code prohibiting officers from dealing in such securities have no application. *Libby v. Pelham*, 30 Idaho 614, 166 P. 575 (1917).

**Sums Allowed by Law.**

Claim of publisher for printing the delinquent tax list pursuant to contract with tax collector is not a sum fixed by law for which auditor must draw his warrant without the claim first being allowed by board of commissioners. *Jolly v. Woodworth*, 4 Idaho 496, 42 P. 512 (1895).

## RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 123, 129.

**31-2302. Requirements of warrants.** — All warrants must distinctly specify the liability for which they are drawn, and when it accrued. [R.S., § 2006; *reen. R.C. & C.L.*, § 2053; C.S., § 3625; I.C.A., § 30-1802.]

## JUDICIAL DECISIONS

## ANALYSIS

Invalid warrants.  
Section mandatory.

**Invalid Warrants.**

Warrants drawn by county auditor which failed to specify the nature of the liability for which they were issued were void and the subsequent ratification of same did not serve to validate them. *Bingham County v. First Nat'l Bank*, 122 F. 16 (9th Cir. 1903).

**Section Mandatory.**

This section is mandatory. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906).

**31-2303. Settlement of debts to county.** — The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to such person a discharge and charge the treasurer with the amount received by him. [R.S., § 2007; reen. R.C. & C.L., § 2054; C.S., § 3626; I.C.A., § 30-1803.]

**31-2304. Accounts with treasurer.** — The auditor must keep accounts current with the treasurer, and when any person deposits with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor must file such receipt and charge the treasurer with the amount thereof. [1864, p. 556, § 25; R.S., § 2008; reen. R.C. & C.L., § 2055; C.S., § 3627; I.C.A., § 30-1804.]

**31-2305. Warrant blanks — Registration.** — The auditor shall have prepared, in separate series, warrant blanks for each year. They must be numbered consecutively, and must show the year against the revenue of which they are to be issued. He shall begin the use of a new series of warrants on the first day in October of each year. All warrants issued by the auditor shall be upon the warrant blanks of the series for the year chargeable with the amount for which such warrant is issued, and the number, date and amount of each, and the name of the person to whom payable, and the purpose for which drawn must be stated thereon. All warrants must, at the time they are issued, be registered by the auditor. [R.S., § 2009; am. 1899, p. 397, § 1; reen. R.C. & C.L., § 2056; C.S., § 3628; I.C.A., § 30-1805; am. 1935, ch. 21, § 1, p. 38; am. 1976, ch. 45, § 22, p. 122; am. 1984, ch. 111, § 2, p. 255.]

**31-2306. Joint statement by auditor and treasurer — Publication of summary.** — The auditor and treasurer of each county must, on the second Mondays in January, April, July and October, make a joint statement to the board of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury; the funds among which the same was distributed, and the amount to each; the total amount of warrants, drawn and paid, and on what fund; the total amount of warrants drawn and



unpaid; accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county. Said auditor and treasurer shall cause to be published a summary of said statements in some newspaper published in the county. [R.S., § 2010; am. 1895, p. 13, § 1; reen. 1899, p. 233, § 1; reen. R.C. & C.L., § 2057; C.S., § 3629; I.C.A., § 30-1806.]

#### STATUTORY NOTES

**Cross References.** — Publication of notices, § 60-109. Quarterly report, § 31-2113.

**31-2307. Annual statement of financial condition of county.** — Every county auditor must, on or before the second Monday in January of each year, prepare, in duplicate, an exact and full statement, under oath, of the financial condition of his county for the fiscal year last preceding, in such form as prescribed by the board of county commissioners, one of which statements shall be filed in the office of the county auditor and the other with the board of county commissioners of the county. [I.C., § 31-2307, as added by 1901, p. 294, § 1; reen. R.C. & C.L., § 2058; C.S., § 3630; I.C.A., § 30-1807; am. 1976, ch. 45, § 23, p. 122; am. 1989, ch. 92, § 1, p. 217; am. 1994, ch. 180, § 44, p. 420.]

#### STATUTORY NOTES

**Effective Dates.** — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 44 of S.L. 1994, ch. 180 became effective January 2, 1995.

**31-2308. Other duties of auditor.** — The auditor must discharge such other duties as are required by law. [R.S., § 2011; reen. R.C. & C.L., § 2059; C.S., § 3631; I.C.A., § 30-1808.]

#### STATUTORY NOTES

**Cross References.** — Clerk ex-officio auditor, § 34-619. Forest reserve fund apportionment, entry in records, § 57-1302.

**31-2309. Filing and recording bond of recorder and auditor.** — The bonds of the recorder and auditor must be filed by the district judge in the district court for that county, and a copy thereof duly recorded by the county recorder, and when so recorded, fully attested by the district judge. [1875, p. 556, § 5; R.S., § 2013; reen. R.C. & C.L., § 2060; C.S., § 3632; I.C.A., § 30-1809; am. 1970, ch. 120, § 10, p. 284.]

CHAPTER 24

RECORDER

SECTION.  
31-2401. Books to be procured — Custody.  
31-2402. Instruments to be recorded.  
31-2402A. Microfilm records — Method of designation — Official records.  
31-2403. [Repealed.]  
31-2404. Indexes to be kept.  
31-2405. Indexing official deeds.  
31-2406. Certificates of sale.  
31-2407. Judgments affecting land.  
31-2408. Decree of partition — Record im- parts notice.  
31-2409. Several indexes in same volume.  
31-2410. Endorsement on instruments.

SECTION.  
31-2411. Endorsement of book and page of record — Delivery to party.  
31-2412. Number to be stamped on instru- ments.  
31-2413. Reception book.  
31-2414. Certificate of time of reception.  
31-2415. Failure to record instrument prop- erly — Liability and penalty.  
31-2416. [Repealed.]  
31-2417. Liability for neglect.  
31-2418. Fees to be prepaid.  
31-2419. Records open to inspection.  
31-2420. [Repealed.]

**31-2401. Books to be procured — Custody.** — The recorder must procure such books or other electronic storage methods for records as the business of his office requires. He has the custody of and must keep all books, records, maps and papers deposited in his office. The recorder may keep all books, documents, records, maps and papers within an approved electronic storage system. [1864, p. 475, § 64; R.S., § 2023; reen. R.C. & C.L., § 2061; C.S., § 3633; I.C.A., § 30-1901; am. 1989, ch. 90, § 1, p. 211; am. 2005, ch. 243, § 1, p. 756.]

STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.  
Clerk of district court, ex officio recorder, § 31-2001.  
Consolidation of counties, transfer of records, § 31-414.  
County division, transfer of records, § 31-301.  
Deputies, §§ 31-2003 — 31-2008.  
Deputies of county officers, appointment to

be filed in recorder's office, § 31-2007.  
Fees of recorder, § 31-3205.  
Oaths, county officers may administer and certify, § 31-2011.  
Office hours, § 31-2009.  
Offices to be kept at county seat, § 31-2009.  
Official bond, amount, § 31-2015.  
Salary of recorder, § 31-3106.  
State Historical Society, trustee of books and records, § 67-4113.

JUDICIAL DECISIONS

**Cited in:** State ex rel. Rich v. Larson, 84 Idaho 529, 374 P.2d 484 (1962).

**31-2402. Instruments to be recorded.** — (1) He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books or through approved electronic storage systems, in legible handwriting, typewriting or by photographic reproduction:  
(a) Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved and transcripts of judgments or decrees which affect the title or possession of real property, including water rights,

any part of which is situate in the county of which the person is the recorder.

(b) Certificates of marriage and marriage contracts.

(c) Wills admitted to probate.

(d) Official bonds.

(e) Notices of mechanics' liens.

(f) Transcripts of judgments which by law are made liens upon real estate.

(g) Notices of attachments upon real estate.

(h) Notices of the pendency of an action affecting real estate, the title thereto or possession thereof.

(i) Instruments describing or relating to the separate property of married women.

(j) Notices of preemption claims.

(k) Certified copies of any petitions, with the schedules omitted, filled [filed] in, and certified copies of any order or decree made or entered in, any proceeding under the national bankruptcy act.

(l) Financing statements under the uniform commercial code which cover timber to be cut, minerals or the like (including oil and gas), pursuant to section 28-9-301, Idaho Code, or fixtures.

(m) Notice of order of a general adjudication in conformance with section 42-1408, Idaho Code.

(n) Such other writings as are required or permitted by law to be recorded.

(2) The recorder may refuse to record any document which, in his discretion and through consultation with the county prosecutor, is not authorized by law to be recorded. Refusal pursuant to this section shall not create any liability. [1864, p. 475, § 70; R.S., § 2024; modified by 1899, p. 121; compiled and reen. R.C. & C.L., § 2062; C.S., § 3634; am. 1931, ch. 48, § 1, p. 83; I.C.A., § 30-1902; am. 1965, ch. 30, § 1, p. 48; am. 1980, ch. 156, § 4, p. 326; am. 1986, ch. 220, § 25, p. 558; am. 2001, ch. 208, § 27, p. 704; am. 2005, ch. 243, § 2, p. 756.]

## STATUTORY NOTES

**Cross References.** — Attachment, § 8-501 et seq.

Bond of recorder to be filed in probate court, § 31-2309.

Certificates of redemption to be recorded in office of county recorder, § 11-403.

Condemnation proceedings, copy of final order to be filed in office of recorder, § 7-716.

Condominiums, instruments affecting, recordation, § 55-1508.

Deeds, grants and transfers of property, § 55-601.

Fire protection of forest lands, filing of lien for cost of burning slash, § 38-110.

Internal revenue taxes payable to the United States, recording of notices of liens for, § 45-201 et seq.

Issuance of marriage licenses, §§ 32-401, 32-403.

Judgment liens, § 10-1110.

Lis pendens notices, § 5-505.

Marriage certificate, § 32-306.

Marriage contract, § 32-201.

Marriage settlements to be recorded in counties in which real estate situated, § 32-918.

Married woman's separate property, § 32-903.

Mechanics' liens, § 45-501 et seq.

Mortgages, § 45-901 et seq.

Perpetuation of testimony, IRCP, Rules 27(a)(1) — 27(a)(4).

Proof of public record of private writing, how proved, § 9-321.



Return of marriage license and certificate to recorder, § 32-402.

Stumpage districts, copy of organization order to be filed in office of county recorder, § 38-1005; bonds of commissioners, § 38-1006; order confirming assessment of benefits, § 38-1013.

Transfer and inheritance tax on limited estates, bond for payment to be filed in office of county recorder, § 14-412.

Wife's separate personal property, inventory to be recorded, §§ 32-907, 32-908.

Will probate, §§ 15-3-101 — 15-3-1205.

**Effective Dates.** — Section 2 of S.L. 1965, ch. 30 declared an emergency. Approved February 17, 1965.

Section 31 of S.L. 2001, ch. 208 provided that the act should take effect on and after July 1, 2001.

## JUDICIAL DECISIONS

### ANALYSIS

Laborers and materialmen's lien.  
State not exempt from recording fees.

#### **Laborers and Materialmen's Lien.**

Laborers and materialmen have the right to assert and obtain a lien which need not include an acknowledgment for it to be properly recorded against the property upon which they have performed labor or for which they have furnished materials. *A-J Corp. v. GVR Ltd.*, 107 Idaho 1101, 695 P.2d 1240 (1985).

#### **State Not Exempt from Recording Fees.**

There was no legislative intent by the enactment of § 31-3211 to exempt the state or any county as a whole from the payment of

fees authorized or prescribed under § 31-3205, therefore defendant auditor did not have mandatory duty to accept for recording without payment of statutory fees instruments such as deeds, releases, mortgages, easements, etc., offered for recording by the plaintiff in connection with the acquisition of rights of way or other lawful functions. *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).

**Cited in:** *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913); *Millick v. O'Malley*, 47 Idaho 106, 273 P. 947 (1928).

**31-2402A. Microfilm records — Method of designation — Official records.** — In lieu of any or all of the separate books provided for in section 31-2402, Idaho Code, the county recorder may, in his discretion, where such record or document has been copied or reproduced by microfilm, scanned images, digital imaging, or microphotographic process or other approved electronic copying process, designate such record or document by consecutive volume and instrument numbers to be called "official records" and recorded consecutively in his office in suitable containers and cabinets or electronic storage devices.

The recording of such instruments and documents in such "official records" will impart notice in like manner and effect as if such instruments or documents were recorded in any of the separate books provided for in section 31-2402, Idaho Code. [I.C., § 31-2402A, as added by 1963, ch. 86, § 1 p. 281; am. 2005, ch. 243, § 3, p. 756.]

## STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1963, ch. 86 declared an emergency. Approved March 12, 1963.

**31-2403. Register for names of farms. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 30-1903; am. 1989, ch. 90, § 2, p. 211, was comprised 1911, ch. 172, § 567; compiled and repealed by S.L. 1996, ch. 29, § 1, effective reen. C.L., § 2062a; C.S., § 3635; I.C.A., July 1, 1996.

**31-2404. Indexes to be kept.** — Every recorder must keep:

(1) An index of deeds, grants and transfers, labeled "Grantors," each page divided into four (4) columns, headed respectively, "Names of grantors," "Names of grantees," "Date of deeds, grants or transfers" and "Where recorded."

(2) An index of deeds, labeled "Grantees," each page divided into four (4) columns, headed respectively, "Names of grantees," "Names of grantors," "Date of deeds, grants or transfers" and "Where recorded."

(3) An index of mortgages, labeled "Mortgagors of real property," with the pages thereof divided into five (5) columns, headed respectively, "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," and "When discharged."

(4) An index of mortgages, labeled "Mortgagees of real property," with the pages thereof divided into five (5) columns, headed respectively, "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," and "When discharged."

(5) An index of release of mortgages, labeled "Releases of mortgages of real property — mortgagors," with the pages thereof divided into six (6) columns, headed respectively, "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," and "Where mortgages released are recorded."

(6) An index of releases of mortgages, labeled "Releases of mortgages of real property — mortgagees," with the pages thereof divided into six (6) columns, headed respectively, "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," and "Where mortgages released are recorded."

(7) An index of powers of attorney, labeled "Powers of attorney," each page divided into five (5) columns, headed respectively, "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," and "Where powers are recorded."

(8) An index of leases, labeled "Lessors," each page divided into four (4) columns, headed respectively, "Names of lessors," "Names of lessees," "Date of leases," and "When and where recorded."

(9) An index of leases, labeled "Lessees," each page divided into four (4) columns, headed respectively, "Names of lessees," "Names of lessors," "Date of leases," and "When and where recorded."

(10) An index of marriage certificates, labeled "Marriage certificates — Men," each page divided into six (6) columns, headed respectively, "Men married," "To whom married," "When married," "By whom married," "Where married," and "Where certificates are recorded."

(11) An index of marriage certificates, labeled "Marriage certificates — Women," each page divided into six (6) columns, headed respectively,

"Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," and "Where certificates are recorded."

(12) An index of assignments of real property mortgages and leases, labeled "Assignments of mortgages and leases — assignors," each page divided into five (5) columns, headed respectively, "Assignors," "Assignees," "Instruments assigned," "Date of assignment," and "When and where recorded."

(13) An index of assignments of real property mortgages and leases, labeled "Assignments of mortgages and leases — assignees," each page divided into five (5) columns, headed respectively, "Assignees," "Assignors," "Instruments assigned," "Date of assignments," and "When and where recorded."

(14) An index of wills, labeled "Wills," each page divided into four (4) columns, headed respectively, "Names of testators," "Date of wills," "Date of probate," and "When and where recorded."

(15) An index of official bonds, labeled "Official bonds," each page divided into five (5) columns, headed respectively, "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," and "When and where recorded."

(16) An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three (3) columns, headed respectively, "Parties claiming liens," "Against whom claimed," and "Notices, when and where recorded."

(17) An index to transcripts of judgment, labeled "Transcripts of judgments," each page divided into seven (7) columns, headed respectively, "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recorded," "When recovered," "When transcript filed," and "When judgment satisfied."

(18) An index of attachments, labeled "Attachments," each page divided into six (6) columns, headed respectively, "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," and "When attachments discharged."

(19) An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three (3) columns, headed respectively, "Parties to the actions," "Notices, when recorded," and "Where recorded."

(20) An index of the separate property of married women, labeled "Separate property of married women," each page divided into five (5) columns, headed respectively, "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," and "Where recorded."

(21) An index of possessory claims, labeled "Possessory claims," each page divided into five (5) columns, headed respectively, "Claimants," "Notices," "When received," "Date of notices," and "When and where recorded."

(22) An index of homesteads, labeled "Homesteads," each page divided into five (5) columns, headed respectively, "Claimants," "Date of declaration," "When and where recorded," "Abandonment," and "When and where recorded."



(23) An index of agreements and bonds affecting the title of real property, labeled "Real property agreements," each page divided into four (4) columns, headed respectively, "Vendors," "Vendees," "Date of agreement," and "When and where recorded."

(24) An index of mining claims, labeled "Mining claims," each page divided into five (5) columns, headed "Locators," "Name of claim," "Date of location," "When filed for record," and "Where recorded."

(25) An index of water rights, labeled "Water rights," each page divided into four (4) columns, labeled, "Locators," "Date of notice," "When filed for record," and "Where recorded."

(26) A general index of all papers to be entered as they are filed.

(27) An index, labeled "Financing Statements," as required under Part 4 [5] of the Uniform Commercial Code — Secured Transactions.

(28) In lieu of the above-named indexes, a recorder may create an electronic management system into which all of the above-named indexes are file names. Each of these files shall segregate the above-referenced records and permit search and retrieval capabilities of each file type under each of the above-enumerated categories. [1864, p. 475, § 72; R.S., § 2025; reen. R.C. & C.L., § 2063; C.S., § 3636; I.C.A., § 30-1904; am. 1967, ch. 272, § 5, p. 745; am. 2005, ch. 243, § 4, p. 756.]

## STATUTORY NOTES

**Cross References.** — Federal lien tax index, § 45-202.

**Compiler's Notes.** — Section 33 of S.L. 1967, ch. 272 provides that all transactions and events occurring before midnight December 31, 1967 are to be treated as though the amendment by S.L. 1967, ch. 272, § 5 had not occurred.

Part 4 of the Uniform Commercial Code — Secured Transactions, referred to in subsec-

tion (27), is compiled in § 28-9-401 et seq. However, following the revision of chapter 9 of title 28 in 2001, the reference in subsection (27) should be to Part 5 of that chapter. See § 28-9-501.

**Effective Dates.** — Section 32 of S.L. 1967, ch. 272 provides that the act is to become effective at midnight December 31, 1967 and applies to all transactions entered into and events occurring after that date.

## JUDICIAL DECISIONS

### ANALYSIS

Character of record.  
Misfiling.  
Other indexes.  
Real property index.

### Character of Record.

Recording laws of this state provide for making a record title to mining property, and these records furnish a ready and convenient means of information on all matters required to be on record. *Moore v. Pooley*, 17 Idaho 57, 104 P. 898 (1909).

### Misfiling.

A mistake by a county recorder in misfiling a financing statement does not affect the perfection of the creditor's security interest where the financing statement presented was proper even though no notice is given to

subsequent searchers. *Wood v. Pillsbury Co.*, 38 Bankr. 375 (Bankr. D. Idaho 1983).

### Other Indexes.

County commissioners have no authority to require county recorder to keep any other indexes than provided in this and the following sections. *Reilly v. Board of County Comm'rs*, 29 Idaho 212, 158 P. 322 (1916).

### Real Property Index.

Statute provides no method of keeping a numerical record and index of real property, and of conveyances affecting the same. It provides only for alphabetical indexes of

grantors and grantees. *Harris v. Reed*, 21 Idaho 364, 121 P. 780 (1912).

**Cited in:** *Jones v. State*, 91 Idaho 823, 432 P.2d 420 (1967).

**31-2405. Indexing official deeds.** — Deeds made by sheriffs, collectors, administrators, trustees and other officers, in their official capacity, shall be indexed by the recorder in the name of the owner of the property conveyed, as grantor, by the officer, naming him and his office. [1907, p. 95, § 1; reen. R.C. & C.L., § 2064; C.S., § 3637; I.C.A., § 30-1905.]

#### JUDICIAL DECISIONS

**Cited in:** *Reilly v. Board of County Comm'rs*, 29 Idaho 212, 158 P. 322 (1916).

**31-2406. Certificates of sale.** — The recorder must keep in his office a book to be called "Certificates of sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which he must enter, in separate columns, the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale. [R.S., § 2026; am. and reen. R.C. & C.L., § 2065; C.S., § 3638; I.C.A., § 30-1906.]

#### STATUTORY NOTES

**Cross References.** — Certificate of sale under execution, §§ 11-309, 11-310.

**31-2407. Judgments affecting land.** — When requested and paid the fee therefor, the recorder must record with the record of deeds, grants and transfers, certified copies of final judgments, decrees or transcripts of judgments or decrees partitioning or affecting the title or possession of real property, including water rights, any part of which is situate in the county of which he is recorder. [R.S., § 2027; reen. R.C. & C.L., § 2066; C.S., 3639; I.C.A., § 30-1907; am. 1986, ch. 220, § 26, p. 558; am. 1989, ch. 90, § 3, p. 211.]

#### JUDICIAL DECISIONS

##### **Failure to Record.**

Failure to record with recorder judgment recovered in court of competent jurisdiction, having effect of a lien on real property, does not prevent judgment from becoming binding upon property involved by such judgment,

and also upon the parties to suit and their privies, when entered as a judgment in a court of competent jurisdiction. *Smith v. Kessler*, 22 Idaho 589, 127 P. 172 (1912).

**Cited in:** *Jones v. State*, 91 Idaho 823, 432 P.2d 420 (1967).

**31-2408. Decree of partition — Record imparts notice.** — Every such certified copy of a decree of partition, from the time of delivery of the same with the recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees and lienholders, purchase and take with like notice and effect as if such copy of decree was

a duly recorded deed, grant or transfer. [R.S., § 2028; am. and reen. R.C. & C.L., § 2067; C.S., § 3640; I.C.A., § 30-1908; am. 1989, ch. 90, § 4, p. 211.]

**31-2409. Several indexes in same volume.** — The recorder may keep in the same volume any two (2) or more of the indexes required to be kept, but the several indexes must be kept distinct from each other, and the volume must be distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order. [1864, p. 475, § 73; R.S., § 2029; modified by 1907, p. 95; compiled and reen. R.C. & C.L., § 2068; C.S., § 3641; I.C.A., § 30-1909.]

**31-2410. Endorsement on instruments.** — When any instrument, paper or notice, authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and at once enter it in the proper index or approved electronic storage and retrieval system, and must record the same without delay, together with the acknowledgment, proofs and certificates, written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note on the instrument the exact time of its reception, and the name of the person at whose request it was recorded. [1864, p. 475, § 74; R.S., § 2030; reen. R.C. & C.L., § 2069; C.S., § 3642; I.C.A., § 30-1910; am. 1988, ch. 5, § 1, p. 5; am. 2005, ch. 243, § 5, p. 756.]

**31-2411. Endorsement of book and page of record — Delivery to party.** — The recorder must also endorse upon each instrument, paper or notice, the book and pages or instrument number in which it is recorded, and must thereafter deliver it upon request to the party leaving the same for record. If an approved electronic system is used, the recorder shall endorse upon each instrument a suitable reference number to enable direct retrieval of the recorded document from the electronic system. [1864, p. 475, § 75; R.S., § 2031; reen. R.C. & C.L., § 2070; C.S., § 3643; I.C.A., § 30-1911; am. 1989, ch. 90, § 5, p. 211; am. 2005, ch. 243, § 6, p. 756.]

## JUDICIAL DECISIONS

### ANALYSIS

Cost of delivery.

Mailing recorded document.

#### Cost of Delivery.

This section does not allow a recorder passively to hold a document for "pick up," and although mailing is an economic burden to the recorder, he is entitled to collect \$3.00 per recorded page as a recording fee and this charge covers the cost of delivery. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### Mailing Recorded Document.

A recorder must mail a recorded document, if requested, to the party who left it for recording, without indirectly imposing an additional charge by demanding a stamped, self-addressed envelope. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).



**31-2412. Number to be stamped on instruments.** — It is hereby made the duty of each county recorder in this state, when any instrument, paper or notice authorized by law to be recorded is deposited in the recorder's office for record, immediately to write or stamp thereon an instrument number, and the numbers so stamped shall be consecutive in the order of filing, in only one (1) series of numbers, commencing with the general reception number next in order, upon this amendment becoming effective, in each county and following in the order of the filing of all instruments, papers or notices, and priority of number shall be prima facie evidence of priority of filing: provided, that when such recorder shall receive by mail or other like inclosure more than one (1) instrument, paper or notice at a time, he shall affix such numbers in the consecutive order in which said instruments, papers or notice actually came into his hand on opening, save that when more than one instrument, paper or notice is received from the same source at the same time, he may follow such directions as the sender may give in relation to such numbering. In addition to general reception numbers as above provided the county recorder may use such additional numbers as may be convenient for filing and indexing. [1903, p. 428, § 1; reen. R.C. & C.L., § 2071; C.S., § 3644; I.C.A., § 30-1912; am. 1949, ch. 164, § 1, p. 352.]

#### JUDICIAL DECISIONS

##### **Filing of Judgment.**

Where the record shows that no request was made nor fees tendered to the recorder to have an abstract, transcript or copy of the judgment filed with the recorder at the time it was entered in the judgment book, it was the determination of the court that no lien was

created by the judgment superior to the homestead declaration since the judgment had not been tendered with fees to recorder of the county for entry into the reception books before the declaration of homestead was filed for record. *Messenger v. Burns*, 86 Idaho 26, 382 P.2d 913 (1963).

**31-2413. Reception book.** — There shall be provided by the county recorder of each county, a book for use in the office of the recorder to be known as the reception book, in which shall be entered, immediately after numbering, all instruments, papers or notices authorized by law to be recorded. Such book shall be ruled in parallel columns and in the first column at the left hand side of the page shall be entered the instrument number; in the second column, the day, hour and minute of filing; in the third column, the grantor, or person executing the instrument; in the fourth column, the grantee, or person to whom the instrument is executed, if there be such; in the fifth column, the character of the instrument; in the sixth column, the book and page where recorded; in the seventh column a brief description of the property, if any, described therein; and in the last column at the right, the name of the person to whom delivered. Such book shall be a part of the public records of such office, and open to public inspection during office hours. [1903, p. 428, § 2; reen. R.C. & C.L., § 2072; C.S., § 3645; I.C.A., § 30-1913; am. 1989, ch. 90, § 6, p. 211.]

## JUDICIAL DECISIONS

## ANALYSIS

Filing of judgment.  
No new duties created.

**Filing of Judgment.**

Where the record shows that no request was made nor fees tendered to the recorder to have an abstract, transcript or copy of the judgment filed with the recorder at the time it was entered in the judgment book, it was the determination of the court that no lien was created by the judgment superior to the homestead declaration since the judgment had not been tendered with fees to recorder of the county for entry into the reception book before the declaration of homestead was filed for record. *Messenger v. Burns*, 86 Idaho 26, 382 P.2d 913 (1963).

**No New Duties Created.**

Duties of a recording officer do not impose any further recording requirements; therefore, a purchaser of land had constructive notice of covenants, conditions, and restrictions imposed upon subdivided land, despite the fact that a recording official improperly recorded the document under the incorrect name. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (2004).

**31-2414. Certificate of time of reception.** — When any such instrument, paper or notice is numbered and entered in the reception book and indexed, it shall be recorded, as now provided by law; and it shall be the duty of the recorder to write or stamp, or cause to be written or stamped, at the beginning of the record thereof, if recorded, the words "Instrument number" and add thereto the number stamped or written on such instrument, paper or notice, and to add immediately after the record thereof, a certificate setting forth the exact time of the reception of such instrument, paper or notice, giving the day, hour and minute as set out in the original notation of recording made by him upon the instrument, paper or notice itself, and the name of the person at whose request it is recorded, which record and certificate he shall authenticate with his official signature, but for which certificate and authentication he shall not be authorized or permitted to collect a fee. [1903, p. 428, § 3; reen. R.C. & C.L., § 2073; C.S., § 3646; I.C.A., § 30-1914; am. 1989, ch. 90, § 7, p. 211.]

**31-2415. Failure to record instrument properly — Liability and penalty.** — If any recorder neglects or refuses or fails to record any instrument, paper or notice authorized by law to be recorded, in the manner provided for in sections 31-2412, 31-2413 and 31-2414, Idaho Code, he shall be liable to the party aggrieved for the amount of the damages which may be occasioned thereby, and for each such neglect or failure or refusal, whether damages are recovered by an aggrieved party or not, he shall pay into the current expense fund of his county the sum of fifty dollars (\$50.00), which may be recovered by an action which it is the duty of the prosecuting attorney to prosecute. All penalties provided by this section shall be recoverable from the recorder upon his official bond. [1903, p. 428, § 4; reen. R.C. & C.L., § 2074; C.S., § 3647; I.C.A., § 30-1915; am. 1989, ch. 90, § 8, p. 211.]

### STATUTORY NOTES

**Cross References.** — Marriage license authority to issue, § 32-401; penalty for issuing when parties not legally competent to marry, § 32-403; record of return of license, § 32-407; penalty for wilfully recording a

false marriage, § 32-410; penalty for issuing license without medical certificate, § 32-415.

Treble damages, liability for neglect, § 31-2417.

### JUDICIAL DECISIONS

#### ANALYSIS

Photocopying.

Physical handling of documents.

#### Photocopying.

Title company's desire to avoid increases in fees charged by the recorder does not outweigh the recorder's duty to protect the safety of documents entrusted to his care, nor does it diminish the recorder's power to control the orderly function of his office, and accordingly the recorder cannot be compelled to allow private photocopying of public records in the courthouse. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### Physical Handling of Documents.

Even if the public is entitled to know the contents of a document when it has been filed,

this entitlement does not necessarily extend to physical handling of the document; to allow physical handling of an original document before it becomes an official record upon microfilming would carry a potential for abuse, because if the document were altered or damaged, the public record would be affected; moreover, private rights or obligations could be put in doubt if an original document were altered or damaged after it was microfilmed but before it was returned to the proper party. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

### 31-2416. Recorder must make searches and furnish certificates. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1864, p. 475, § 76; R.S., § 2032; reen. R.C. & C.L., § 2075; C.S., § 3648;

I.C.A., § 30-1916 was repealed by S.L. 1976, ch. 281, § 1.

**31-2417. Liability for neglect.** — (1) If any recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

- (a) Neglects or refuses without any legal basis to record such instrument, paper or notice within a reasonable time after receiving the same; or
- (b) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or
- (c) Neglects or refuses to keep in his office such indexes as are required by this chapter, or to make the proper entries therein; or
- (d) Alters, changes or obliterates any records deposited in his office or inserts any new matter therein.

He is liable to the party aggrieved for the amount of the damages which may be occasioned thereby.

(2) Under no circumstances shall a recorder be liable for the release of any recorded information pursuant to a request and payment of fees. [1864,



p. 475, § 77; R.S., § 2033; reen. R.C. & C.L., § 2076; C.S., § 3649; I.C.A., 30-1917; am. 1989, ch. 90, § 9, p. 211; am. 2005, ch. 243, § 7, p. 756.]

### STATUTORY NOTES

**Cross References.** — Failure to properly record instrument, liability and penalty, § 31-2415.

### JUDICIAL DECISIONS

#### ANALYSIS

Physical handling of documents.

Private photocopying of public documents.

#### Physical Handling of Documents.

Even if the public is entitled to know the contents of a document when it has been filed, this entitlement does not necessarily extend to physical handling of the document; to allow physical handling of an original document before it becomes an official record upon microfilming would carry a potential for abuse, because if the document were altered or damaged, the public record would be affected; moreover, private rights or obligations could be put in doubt if an original document were altered or damaged after it was microfilmed but before it was returned to the proper party. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### Private Photocopying of Public Documents.

Title company's desire to avoid increases in fees charged by the recorder does not outweigh the recorder's duty to protect the safety of documents entrusted to his care, nor does it diminish the recorder's power to control the orderly function of his office, and accordingly the recorder cannot be compelled to allow private photocopying of public records in the courthouse. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

**31-2418. Fees to be prepaid.** — The county recorder is not bound to record any instrument or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fees for the same, as prescribed by law, are, if demanded, paid or tendered. [1864, p. 475, § 84; R.S., § 2034; reen. R.C. & C.L., § 2077; C.S., § 3650; I.C.A., § 30-1918; am. 1989, ch. 90, § 10, p. 211.]

### STATUTORY NOTES

**Cross References.** — Right to examine public records, § 9-338.  
Certified copy of record of conveyances ad-

missible in evidence, § 9-410.

County commissioner to audit accounts of county officers, § 31-809.

**31-2419. Records open to inspection.** — All books of record, maps, charts, surveys and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection. The recorder may provide one (1) or more public access terminals through which the public may access electronically stored versions of recorded documents. Any person inspecting the records who makes any attempt to alter any record in any way shall be guilty of a misdemeanor. [1864, p. 475, § 80; R.S., § 2035; reen. R.C. & C.L., § 2078; C.S., § 3651; I.C.A., § 30-1919; am. 2005, ch. 243, § 8, p. 756.]

## JUDICIAL DECISIONS

## ANALYSIS

Physical handling.  
Private photocopying.  
Title company.

**Physical Handling.**

Even if the public is entitled to know the contents of a document when it has been filed, this entitlement does not necessarily extend to physical handling of the document; to allow physical handling of an original document before it becomes an official record upon microfilming would carry a potential for abuse, because if the document were altered or damaged, the public record would be affected; moreover, private rights or obligations could be put in doubt if an original document were altered or damaged after it was microfilmed but before it was returned to the proper party. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

**Private Photocopying.**

Title company's desire to avoid increases in

fees charged by the recorder does not outweigh the recorder's duty to protect the safety of documents entrusted to his care, nor does it diminish the recorder's power to control the orderly function of his office, and accordingly the recorder cannot be compelled to allow private photocopying of public records in the courthouse. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

**Title Company.**

A title company, as a member of the public, has a right to inspect, free of charge, records maintained at the recorder's office. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

**31-2420. Abstract fees. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1951, ch. 230, § 1, p. 465 was repealed by S.L. 1976, ch. 281, § 1.

## CHAPTER 25

## ASSESSOR

## SECTION.

31-2501. Duties of assessor.

**31-2501. Duties of assessor.** — The assessor's duties are prescribed in title 63, relating to revenue. [R.C., § 2079; am. 1913, ch. 128, § 1, p. 475; compiled and reen. C.L., § 2079; C.S., § 3652; I.C.A., § 30-2001.]

## STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.

County commissioners to audit accounts of county officers, § 31-809.

Deputies, §§ 31-2003 — 31-2008.

Election, § 34-621.

Nomination, §§ 34-701 — 34-708.

Oaths, county officers may administer and certify, § 31-2011.

Office hours, § 31-2009.

Offices to be kept at county seat, § 31-2009.

Official bond, amount, § 31-2015.

Recall elections, §§ 34-1701 — 34-1715.

Salary of assessor, § 31-3106.

**Compiler's Notes.** — At the time of the enactment of this section, the assessor was ex officio tax collector. By Const., Art. 18, § 6, as amended, the county treasurer was made ex officio tax collector. S.L. 1913, ch. 128, § 1 made the county treasurer ex officio tax collector to conform to the constitutional provi-

sion as amended. It is presumed that this accounts for the inclusion of the 1913 act in the history line of this section by prior compilers.

# JUDICIAL DECISIONS

**Cited in:** Von Jones v. Board of County Comm'rs, 129 Idaho 683, 931 P.2d 1201 (1997).

## CHAPTER 26

### PROSECUTING ATTORNEY

#### SECTION.

- 31-2601. Qualifications.
- 31-2602. Deputy prosecuting attorneys — Appointment, salary, and qualifications.
- 31-2603. Special prosecutor — Appointment.
- 31-2604. Duties of prosecuting attorney.
- 31-2605. Receipts for money collected.
- 31-2606. Prohibitions.
- 31-2607. Adviser of county commissioners.
- 31-2608. County stenographers — Compensation.
- 31-2609. County stenographers — Duties.

#### SECTION.

- 31-2610. County stenographers — Traveling expenses.
- 31-2611. Prosecuting attorney's contingent fund — Appropriation by commissioners.
- 31-2612. Contingent fund — Approval of district court.
- 31-2613. Contingent fund — Manner of disbursement.
- 31-2614. Contingent fund — Unexpended balance.

**31-2601. Qualifications.** — No person shall be eligible to qualify for the office of prosecuting attorney who is not an attorney and counselor at law duly licensed to practice as such in the district courts of the state at the time he assumes office as prosecuting attorney. No prosecuting attorney shall hold any other county or state office during his term of office as prosecuting attorney provided, however, that a prosecuting attorney or a deputy prosecuting attorney may be appointed by the attorney general as a special assistant attorney general for the performance of duties pursuant to such appointment in any other county than the county in which such prosecutor or deputy prosecutor serves. Nothing in this section, as amended, shall be construed to authorize the appointment of a special assistant attorney general except upon the request in writing of the prosecuting attorney in the county in which such special assistant attorney general is to serve, nor shall this section authorize the appointment of a prosecuting attorney as special assistant attorney general without his consent. [1897, p. 74, § 1; reen. 1899, p. 24, § 1; am. and reen. R.C. & C.L., § 2080; C.S., § 3653; I.C.A., § 30-2101; am. 1953, ch. 239, § 1, p. 360.]

### STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.

Action against defaulting prosecuting attorney, county treasurer to bring, § 31-2115.

County commissioners to audit accounts of county officers, § 31-809.

Deputies, §§ 31-2003 — 31-2008.

Divorce on ground of insanity, county attor-

ney to defend, § 32-803.

Oaths, county officers may administer and certify, § 31-2011.

Office hours, § 31-2009.

Official bond, amount, § 31-2015.

Usurpation of county, precinct or city of offices, prosecuting attorney to bring action, § 6-602.

**Compiler's Notes.** — This chapter, based



on 1897, p. 74, superseded R.S., §§ 2050-2057; am. 1890-1891, p. 46, prescribing the duties of the district attorney, which were

rendered obsolete by the amendment, in 1895, of Const., Art. 5, § 18, creating the office of prosecuting attorney.

JUDICIAL DECISIONS

ANALYSIS

Employment of special counsel.  
Residence.

Employment of Special Counsel.

Act providing for district attorney does not impair power of county commissioners to employ special counsel to perform legal services for county as authorized by R.S., § 1759, subd. 13 (§ 31-813). *Anderson v. Shoshone County*, 6 Idaho 76, 53 P. 105 (1898).

Board of county commissioners has no authority to employ counsel to assist prosecuting attorney in prosecuting criminal cases. *Conger v. Board of County Comm'rs*, 5 Idaho

347, 48 P. 1064 (1896); *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

Residence.

Person is not disqualified from acting as temporary county attorney under appointment by reason of his residence in another county. *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

OPINIONS OF ATTORNEY GENERAL

A prosecuting attorney may not serve as a member of the state legislature; therefore, prior to assuming office as prosecutor, a legislator must resign from his or her legislative office. OAG 86-6.

While there is no statutory or constitutional prohibition that prevents a prosecutor from seeking a legislative seat, once elected the prosecutor would be required to make a choice between the two offices. OAG 86-6.

**31-2602. Deputy prosecuting attorneys — Appointment, salary, and qualifications.** — Each prosecuting attorney may be empowered by the board of county commissioners of his county to appoint deputy prosecuting attorneys upon a finding by such board of county commissioners that such appointments are necessary for the proper conduct of his office. The deputy prosecuting attorneys shall receive a salary to be fixed by the board of county commissioners of his county. The salary of any deputy prosecuting attorney shall be paid monthly from the county treasury on warrants of the county auditor on being allowed and audited by the board of county commissioners, as other claims against the county. Every deputy prosecuting attorney must possess the qualifications required of prosecuting attorneys, except that of county residency. [C.S., § 3653-A, as added by 1927, ch. 156, § 1, p. 210; I.C.A., § 30-2102; am. 1941, ch. 138, § 1, p. 272; am. 1986, ch. 139, § 1, p. 375; am. 1996, ch. 352, § 1, p. 1176.]

STATUTORY NOTES

**Cross References.** — Deputies, §§ 31-2003 — 31-2008.

ch. 352 declared an emergency. Approved March 20, 1996.

**Effective Dates.** — Section 2 of S.L. 1996,

JUDICIAL DECISIONS

ANALYSIS

Appointment presumed necessary.  
County bound by contract.  
Independent contractors.

**Appointment Presumed Necessary.**

Grand jury proceeding was not invalid on the ground that deputy prosecuting attorney appeared at sessions without having a finding made by county commissioners that his appointment was necessary where he was duly appointed by prosecutor, oath taken, bond filed and approved by county commissioners since it could be presumed that his appointment was necessary as commissioners had approved appointment and bond. *Gasper v. District Court*, 74 Idaho 388, 264 P.2d 679 (1953).

**County Bound by Contract.**

Where the scheme for hiring additional counsel on behalf of the county was, for the most part, followed, the county was bound to

perform pursuant to the contract, and the allocation of money set the limit for payment of legal services to be provided even though that allocation was not the same as fixing compensation. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

**Independent Contractors.**

Contracts between co-counsel and the county established that they served as independent contractors doing work that was limited in scope and duration, and as such they were paid a fee for their services as opposed to wages. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

**Cited in:** *State v. Scott*, 72 Idaho 202, 239 P.2d 258 (1952).

**31-2603. Special prosecutor — Appointment.** — (a) When the prosecuting attorney for the county is absent from the court, or when he has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged, and for which he is to be tried on a criminal charge, or when he is near of kin to the party to be tried on a criminal charge, or when he has a business connection or kinship with the complainant or defendant, or when he is unable to attend to his duties, the district court may, upon petition of the prosecuting attorney or board of county commissioners, by an order entered in its minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such prosecuting attorney, and the person so appointed has all the powers of the prosecuting attorney, while so acting as such.

(b) The prosecuting attorney may petition the district judge of his county for the appointment of a special assistant attorney-general to assist in the prosecution of any criminal case pending in the county; and if it appears to the district judge to whom such petition is addressed that good cause appears for granting such petition, the district judge, may, with the approval of the attorney-general, appoint an assistant attorney-general to assist in such prosecution. The compensation of the person so appointed shall be fixed by agreement between the district judge and the attorney-general and shall be paid by the attorney-general out of appropriations made available for the conduct of his office. [1897, p. 74, § 2; reen. 1899, p. 24, § 2; am. and reen. R.C. & C.L., § 2081; C.S., § 3654; I.C.A., § 30-2103; am. 1953, ch. 239, § 2, p. 360; am. 1988, ch. 295, § 1, p. 935.]

**STATUTORY NOTES**

**Cross References.** — Absence of prosecuting attorney, § 19-2135.

**JUDICIAL DECISIONS****ANALYSIS**

Appointee.

— Compensation.

- Duties.
- Powers.
- Qualifications.

Appointment.  
 Attorney general.  
 Disqualification of prosecutor.

## **Appointee.**

### **—Compensation.**

Where county commissioners employ an attorney generally to act for the county, and such contract is declared void because it violates this section, attorney so employed can not maintain an action in quantum meruit for the value of services rendered by him for county. *Hampton v. Board of Comm'rs*, 4 Idaho 646, 43 P. 324 (1896).

Appointee may receive such compensation as court may allow out of the salary of district attorney. *Conger v. Board of County Comm'rs*, 5 Idaho 347, 48 P. 1064 (1896).

Where the record showed unresolved genuine issues as to material facts in an action by law partnership for fees against county for representing judge in action against him for a writ of review of contempt order, the summary judgment was reversed. *Kramer v. Twin Falls County*, 94 Idaho 357, 487 P.2d 951 (1971).

### **—Duties.**

Attorney appointed under this section is obliged to act. *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

### **—Powers.**

Properly appointed prosecuting attorney pro tem, being for the time the de facto prosecuting attorney and clothed with powers and duties of that officer, is authorized to appear before the grand jury. *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

This section does not authorize district court to appoint special prosecutor to do an act which it was not duty of regular prosecutor to perform. *Mills v. Board of County Comm'rs*, 35 Idaho 47, 204 P. 876 (1922).

Special prosecutor had the same power as the elected prosecutor to file a lesser charge against defendant where the court previously dismissed the felony charge. *State v. Bacon*, 117 Idaho 679, 791 P.2d 429 (1990).

This section allows appointment by the district court of a special prosecutor to assist in the state's case against a particular defendant in all related proceedings rather than limit the appointment to a court file bearing a particular case number. *State v. Bacon*, 117 Idaho 679, 791 P.2d 429 (1990).

A special prosecutor, once appointed by the district court, had power and authority to file and pursue all related charges, just as if he had been the duly elected prosecuting attorney.

*State v. Bacon*, 117 Idaho 679, 791 P.2d 429 (1990).

### **—Qualifications.**

Person is not disqualified from acting as prosecuting attorney pro tem by reason of having been an attorney for a mining company in a civil case, though it is claimed that the criminal action, for which such attorney is especially appointed, is being prosecuted at the instigation of such mining company, *State v. Corcoran*, 7 Idaho 220, 61 P. 1034, (1900); nor where he was attorney against defendant in a related civil action. *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

Attorney is not disqualified from acting as prosecuting attorney by reason of his residence in another county. *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

Presence of special counsel did not offend public policy on the ground that special counsel represented widow of deceased where record did not show that special counsel had been employed to represent widow in civil action based on same facts as those involved in criminal action, and further did not show any civil suit filed by special counsel in behalf of widow against defendant. *State v. Scott*, 72 Idaho 202, 239 P.2d 258 (1952).

## **Appointment.**

District court and not county commissioners has right to appoint prosecutor where regular prosecuting attorney cannot act. *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

Power to appoint prosecuting attorney is statutory and must be made in manner prescribed by statute. *Mills v. Board of County Comm'rs*, 35 Idaho 47, 204 P. 876 (1922).

Appointment must be act of court appearing of record and cannot be made by judge at chambers. *Mills v. Board of County Comm'rs*, 35 Idaho 47, 204 P. 876 (1922).

Order appointing special prosecuting attorney must show necessity of appointment and reasons therefor. *Mills v. Board of County Comm'rs*, 35 Idaho 47, 204 P. 876 (1922).

Where objection that information was signed by acting prosecuting attorney and record failed to disclose appointment of special prosecutor, or any reason for such appointment, is raised for the first time in Supreme Court, it will be presumed that appointment was properly made by trial court. *State v. Price*, 38 Idaho 149, 219 P. 1049 (1923).



Objection to appointment of special counsel in kidnapping case was waived where no objection was made at trial of case. *State v. Evans*, 72 Idaho 458, 243 P.2d 975 (1952).

Even though the appointment of a special prosecutor was defective or irregular, so far as the defendant in the case was concerned, the special prosecutor nevertheless became a de facto officer and his appointment and the prosecution of the action by him was not subject to collateral attack by the defendant in the absence of a showing that he was denied a fair trial by reason thereof. *State v. Bell*, 84 Idaho 153, 370 P.2d 508 (1962).

#### **Attorney General.**

Through a series of statutes, the state has made it the primary duty of the county prosecutor to enforce the state penal laws, and the attorney general is not authorized to assume the full duties of prosecution from the county prosecutor. *Newman v. Lance*, 129 Idaho 98, 922 P.2d 395 (1996).

#### **Disqualification of Prosecutor.**

Where it appeared that prosecuting attorney was disqualified from acting in a criminal case either through fear or complicity with persons accused, court properly appointed an attorney to act temporarily as prosecuting

attorney. *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

Court may act under this section only on the occurrence of some of the contingencies that disqualify prosecuting attorney from performing the duties of his office. Appointment of special attorney to appear before grand jury on the ground that prosecuting attorney was engaged in other business is void, and an indictment returned by grand jury before which such special attorney appeared should be quashed. *State v. Barber*, 13 Idaho 65, 88 P. 418 (1907).

The affidavit of the prosecuting attorney alleging as a ground for the appointment of a special prosecutor that the prosecuting attorney and the defendant justice of the peace and their respective families had been close personal friends for a period exceeding six years, that defendant and prosecuting attorney had had business and political relations in the past, and that it would be difficult for the prosecuting attorney to conduct the trial of the case was a sufficient showing that the prosecuting attorney was unable to attend to his duties in this particular case. *State v. Bell*, 84 Idaho 153, 370 P.2d 508 (1962).

**Cited in:** *Clark v. Meehl*, 98 Idaho 641, 570 P.2d 1331 (1977).

### **OPINIONS OF ATTORNEY GENERAL**

When the board of county commissioners is unable to find an election-qualified replacement to fill a vacancy in the office of county prosecuting attorney, pursuant to § 59-906, the district court, pursuant to this section, may appoint some "suitable" person as special prosecutor to perform prosecutorial duties for the time being. OAG 87-10.

While a full-time prosecutor may assist in emergency situations when another prosecutor has a conflict or is otherwise absent from his office under this section, such duties should not be undertaken, if the temporary appointment interferes with the prosecutor's full-time commitment to his own elected office. OAG 92-2.

### **RESEARCH REFERENCES**

**A.L.R.** — Validity, under state law, of appointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor, 84 A.L.R.3d 29.

Validity, under state law, of appointment of special prosecutor where regular prosecutor is charged with, or being investigated for,

criminal or impeachable offense, 84 A.L.R.3d 115.

Disqualification of prosecuting attorney in state criminal case on account of relationship with accused. 42 A.L.R.5th 581.

What circumstances justify disqualification of prosecutor in federal criminal case, 110 A.L.R. Fed. 523.

**31-2604. Duties of prosecuting attorney.** — It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.

2. To prosecute all felony criminal actions, irrespective of whom the arresting officer is; to prosecute all misdemeanor or infraction actions for violation of all state laws or county ordinances when the arresting or charging officer is a state or county employee; to conduct preliminary criminal examinations which may be had before magistrates; to prosecute or defend all civil actions in which the county or state is interested; and when a written contract to do so exists between the prosecuting attorney and a city, to prosecute violations for state misdemeanors and infractions and violations of county or city ordinances committed within the municipal limits of that city when the arresting or charging officer is a city employee.

3. To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters arising in the conduct of the public business entrusted to the care of such officers.

4. To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses.

5. On the first Monday of each month to settle with the auditor, and pay over all money collected or received by him during the preceding month, belonging to the county or state, to the county treasurer, taking his receipt therefor, and to file, on the first Monday of October in each year, in the office of the auditor of his county, an account verified by his affidavit, of all money received by him during the preceding year, by virtue of his office, for fines, forfeitures, penalties or costs, specifying the name of each person from whom he receives the same, the amount received from each, and the cause for which the same was paid.

6. To perform all other duties required of him by any law. [1897, p. 74, § 3; reen. 1899, p. 24, § 3; am. and reen. R.C. & C.L., § 2082; I.C.A., § 30-2104; am. 1953, ch. 239, § 3, p. 360; am. 1970, ch. 120, § 11, p. 284; am. 1971, ch. 94, § 1, p. 206; 1976, ch. 45, § 24, p. 122; am. 1989, ch. 292, § 1, p. 719.]

## STATUTORY NOTES

**Cross References.** — Dairy product dealers, inspection and licenses, duty to prosecute violations, § 37-518.

Dairy products, discrimination and unfair competition in buying and selling, prosecutions for, § 37-1005.

Disinterment of bodies for legal purposes, special permits, § 39-269.

Election, § 34-623.

Forest protective districts, enforcement of liens against property in, § 38-128.

Forestry Act, prosecution of violators, penalty against prosecutor for failing to comply, § 38-128.

Gasoline, lubricating oil, and fuel oil, adulteration and misbranding, prosecutions under law concerning, § 37-2509.

Inflammation of eyes of newborn, certification to prosecuting attorney when birth report

fails to show installation of germicide, § 39-907.

Official bond, amount, § 31-2015; as public administrator, § 31-2015.

Pasteurization of market milk and products, prosecuting attorney to assist in enforcement, § 37-703.

Primary duty of prosecuting attorney to enforce penal laws, § 31-2227.

Public administrator represented by, § 14-118.

Recall elections, §§ 34-1701 — 34-1715.

Slash from cutting timber, abatement of nuisance, § 38-109.

Social work licensing act, duties, § 54-3216.

Stumpage districts, prosecuting attorney to draw up papers and act as legal adviser for, § 38-1011.

Succession not claimed, duty of prosecuting attorney, § 14-117.

Testing of milk and cream, standardization of glassware for, prosecution of violations, § 37-605.

Witnesses may be subpoenaed by without tendering fees, § 9-1605.

Workmen's compensation law, enforcement, duties, § 72-518.

**Effective Dates.** — Section 4 of S.L. 1953, ch. 239 declared an emergency. Approved March 17, 1953.

Section 2 of S.L. 1971, ch. 94 declared an emergency. Approved March 11, 1971.

## JUDICIAL DECISIONS

### ANALYSIS

Additional services.

Attorney general.

Civil actions.

Contracts with municipalities.

Criminal actions.

Power to take appeal.

Preliminary examinations.

Representation of county officer.

Special counsel.

### Additional Services.

Special services rendered by prosecuting attorney held to be within the scope of his duties for which he is paid a fixed salary under Const., art. 5, § 18, as amended. *Givens v. Carlson*, 29 Idaho 133, 157 P. 1120 (1916).

### Attorney General.

Through a series of statutes, the state has made it the primary duty of the county prosecutor to enforce the state penal laws, and the attorney general is not authorized to assume the full duties of prosecution from the county prosecutor. *Newman v. Lance*, 129 Idaho 98, 922 P.2d 395 (1996).

### Civil Actions.

It is the duty of district attorney to prosecute an action to foreclose school fund mortgage without extra compensation. *State v. Fitzpatrick*, 5 Idaho 499, 51 P. 112 (1897).

It is imperative duty of prosecuting attorney to prosecute or defend all actions, applications, or motions in district court. *Mills v. Board of County Comm'rs*, 35 Idaho 47, 204 P. 876 (1922).

The legislative grant of authority to the prosecuting attorney to prosecute actions in which "the people are interested" amounts to a statutory grant of standing in an action to establish public rights in waterfront property. *State ex rel. Haman v. Fox*, 100 Idaho 140, 594 P.2d 1093 (1979).

### Contracts with Municipalities.

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of

the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

### Criminal Actions.

County commissioners are not authorized to employ counsel to assist prosecutor in criminal cases. *Conger v. Board of County Comm'rs*, 5 Idaho 347, 48 P. 1064 (1896); *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

It is the duty of prosecuting attorney to prosecute all criminal cases in which he is not disqualified. *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

### Power to Take Appeal.

In action by county to recover road poll tax from corporation due from employees of corporation, prosecuting attorney has authority to appeal in name of county from an adverse judgment and such appeal need not be taken by or in the name of attorney-general. *Kootenai County v. Hope Lumber Co.*, 13 Idaho 262, 89 P. 1054 (1907).

Prosecuting attorney must look after and defend any and all litigation instituted against county, and has power to take an appeal in any such cases from district court to Supreme Court, and it does not require an order of board of commissioners to authorize him to do that. *Board of County Comm'rs v. Bassett*, 14 Idaho 324, 93 P. 774 (1908).

### Preliminary Examinations.

It is the duty of prosecuting attorney to attend before magistrates and conduct preliminary examinations; and he may cause an



examination to be had for such offense as he deems proper. *State v. McGreevey*, 17 Idaho 453, 105 P. 1047 (1909).

#### **Representation of County Officer.**

Where the record showed unresolved genuine issues as to material facts in an action by law partnership for fees against county for representing judge in action against him for a writ of review of contempt order, the summary judgment was reversed. *Kramer v. Twin Falls County*, 94 Idaho 357, 487 P.2d 951 (1971).

#### **Special Counsel.**

This section does not preclude private counsel from appearing for the state in criminal cases. *People v. Biles*, 2 Idaho (Hasb.) 114, 6 P. 120 (1885); *State v. Steers*, 12 Idaho 174, 85 P. 104 (1906).

**Cited in:** *Kinner v. Steg*, 74 Idaho 382, 262 P.2d 994 (1953); *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

### **OPINIONS OF ATTORNEY GENERAL**

The provisions of § 31-2227, this section and § 50-208A are fully applicable to the provisions of §§ 18-605, 18-606 and 18-607 making certain violations criminal offenses. Thus, prosecutions for unlawful abortions under Idaho Code §§ 18-605 and 18-606, which are declared to be felonies, would be the responsibility of the prosecuting attorney. OAG 93-1.

The board of county commissioners does not have the authority to hire civil counsel outside of the county prosecutor's office on a

long-term continuous basis unless they comply with the standard of "necessity" mandated by Const., Art. 18, § 6 and before hiring such counsel the commissioners must conduct a case-by-case analysis and state the facts which create the necessity of hiring such counsel and must make these reasons a matter of record which are reviewable by the courts; mere comfort level or convenience does not rise to the level of necessity in this context. OAG 93-8.

### **RESEARCH REFERENCES**

**A.L.R.** — Prosecuting attorney as a witness in criminal case, 54 A.L.R.3d 100.

Power of private citizen to institute criminal proceedings without authorization or approval by prosecuting attorney, 66 A.L.R.3d 732.

Immunity of prosecuting attorney or similar officer from action for false arrest or imprisonment, 79 A.L.R.3d 882.

Prosecutor's power to grant prosecution witness immunity from prosecution, 4 A.L.R.4th 1221.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney, 10 A.L.R.4th 605.

Availability of writ of prohibition or similar remedy against acts of public prosecutor, 16 A.L.R.4th 112.

Right of prosecutor to withdraw from plea bargain prior to entry of plea, 16 A.L.R.4th 1089.

**31-2605. Receipts for money collected.** — When any prosecuting attorney receives any money for fines, forfeitures, penalties or costs, he must deliver to the person paying the same duplicate receipts therefor, one (1) of which must be filed by such person in the office of the county auditor. [1897, p. 74, § 4; reen. 1899, p. 24, § 4; am. and reen. R.C. & C.L., § 2083; C.S., § 3656; I.C.A., § 30-2105.]

**31-2606. Prohibitions.** — No prosecuting attorney must receive any fee or reward for or on behalf of any prosecutor or other individual, for services in any prosecution, or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the state, people or county, in any civil action depending upon the same state of facts, upon which any criminal prosecution commenced but not determined depends, and no law partner of any county attorney must be engaged in the defense of any suit, action or proceeding, in which

said prosecuting attorney appears on behalf of the people, state or county. [1897, p. 74, § 5; reen. 1899, p. 24, § 5; am. and reen. R.C. & C.L., § 2084; C.S., § 3657; I.C.A., § 30-2106.]

### STATUTORY NOTES

**Cross References.** — Penalty for attorney defending when partner prosecutes, § 18-1003.

### JUDICIAL DECISIONS

#### ANALYSIS

Application.  
Conflict of interest.  
Prosecutor as witness.

#### Application.

This section applies only to prosecuting attorneys regularly elected or appointed, not to attorneys appointed by the district court under § 31-2603. *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

#### Conflict of Interest.

Where one of the defense attorneys became a civil deputy in the prosecutor's office during the prosecution of defendants' criminal cases, the trial court took adequate precautions to avoid any prejudice to the defendants by entering an order directing the attorney not to discuss any criminal proceedings in which he had participated or of which he had knowledge with any person while he was employed by the prosecutor's office; ordering that the prosecutor issue and file with the trial court a written instruction directing the prosecutor's staff not to discuss any pending criminal proceedings, including but not limited to this

one, with the attorney; ordering the prosecutor to file statements with the court from each member of the prosecutor's staff indicating receipt of this instruction; and ordering the prosecutor to file similar statements from the police and governmental agencies involved in the case. *State v. Dambrell*, 120 Idaho 532, 817 P.2d 646 (1991).

#### Prosecutor as Witness.

Court properly allowed testimony of assistant city attorney as eyewitness to defendant's arrest for driving while under the influence of alcohol, since the attorney did not appear before the court and jury in his prosecutorial role, but rather the state called him as an independent eyewitness to the defendant's conduct at the time of arrest and it was the defense, not the prosecution, that elicited the evidence that he was a "prosecutor." *State v. Bradley*, 120 Idaho 566, 817 P.2d 1090 (Ct. App. 1991).

**Cited in:** *State v. Scott*, 72 Idaho 202, 239 P.2d 258 (1952).

### RESEARCH REFERENCES

**A.L.R.** — Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 A.L.R.3d 562.

Disqualification of prosecuting attorney in

state criminal case on account of relationship with accused. 42 A.L.R.5th 581.

What circumstances justify disqualification of prosecutor in federal case, 110 A.L.R. Fed. 523.

**31-2607. Adviser of county commissioners.** — The prosecuting attorney is the legal adviser of the board of commissioners; he must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal. [1897, p. 74, § 7; reen. 1899, p. 24, § 6; am. and reen. R.C. & C.L., § 2085; C.S., § 3658; I.C.A., § 30-2107.]

## OPINIONS OF ATTORNEY GENERAL

The board of county commissioners does not have the authority to hire civil counsel outside of the county prosecutor's office on a long-term continuous basis unless they comply with the constitutionally mandated standard of "necessity" mandated by Const., Art. 18, § 6 and before hiring such counsel the

commissioners must conduct a case-by-case analysis and state the facts which create the necessity of hiring such counsel and must make these reasons a matter of record which are reviewable by the courts; mere comfort level or convenience does not rise to the level of necessity in this context. OAG 93-8.

**31-2608. County stenographers — Compensation.** — The board of county commissioners of any county in this state may if they deem it advisable for the best interests of the county, employed competent stenographers at a compensation, to be fixed by said board, to take and transcribe testimony at preliminary hearings or examinations. [1909, p. 146, § 1; am. 1913, ch. 59, § 1, p. 244; reen. C.L., § 2086a; C.S., § 3659; am. 1929, ch. 96, § 1, p. 158; I.C.A., § 30-2108; am. 1953, ch. 220, § 1, p. 335.]

## STATUTORY NOTES

**Cross References.** — Committing magistrate not entitled to folio fee when transcribed by county stenographer, § 19-514.

## JUDICIAL DECISIONS

**Cited in:** State v. Carlson, 23 Idaho 545, 130 P. 463 (1913); State v. Peterson, 87 Idaho 147, 391 P.2d 846 (1964).

**31-2609. County stenographers — Duties.** — Said stenographers shall be under the control and direction of the prosecuting attorney of the said county, and it shall be the duty of such stenographers to be present at all preliminary examinations when so requested by the prosecuting attorney, to take and transcribe the testimony of all such witnesses in said examination, and to certify the same as true and correct, which said certificate shall be sufficient proof of the correctness of said depositions, the reading of the same to or by the witness and the signing of the same by the witness being hereby dispensed with. Said stenographers shall also perform such other duties as may be required by the prosecuting attorney in the conduct of his office, and other county business. Nothing in this section shall be construed to provide an exclusive procedure for the taking of testimony at preliminary examinations, and such testimony may be taken by means of a mechanical recording device if the committing magistrate shall so order. In the event such mechanical recording device is used, one of the county stenographers shall upon completion of the hearing forthwith transcribe such testimony and certify the same to be true and correct as elsewhere in this section provided, and such certificate shall be sufficient proof of the correctness of such transcript and depositions and the reading of the same and signing of same by witnesses is hereby dispensed with. [1909, p. 146, § 2; reen. C.L., § 2086b; C.S., § 3660; I.C.A., § 30-2109; am. 1953, ch. 220, § 2, p. 335.]



## STATUTORY NOTES

**Cross References.** — Certification of testimony, § 19-812.

**31-2610. County stenographers — Traveling expenses.** — When it becomes necessary for said stenographers to go from place to place in the performance of county business, the expenses of travel, including hotel and board, shall be a charge against the county, and shall be allowed in addition to the monthly salary. [1909, p. 146, § 3; reen. C.L., § 2086c; C.S., § 3661; I.C.A., § 30-2110; am. 1953, ch. 220, § 3, p. 335.]

**31-2611. Prosecuting attorney's contingent fund — Appropriation by commissioners.** — The county commissioners of each county in this state are hereby authorized and directed to set apart at their first meeting in October of each year, from any funds then in the county treasury, not specially appropriated or set aside for other purposes, in an amount to be fixed by said board of county commissioners, a sum of money not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000), to be used by the prosecuting attorney of each county as a contingent fund for the purpose of defraying such necessary expenses as are not otherwise specifically provided for in the trial and preparation for trial of criminal cases, and in the payment of such necessary expenses as are not otherwise provided for in conducting investigations by the grand jury. [1911, ch. 140, § 1, p. 436; reen. C.L., § 2086d; C.S., § 3662; I.C.A., § 30-2111; am. 1976, ch. 45, § 25, p. 122.]

## STATUTORY NOTES

**Effective Dates.** — Section 32 of S.L. 1976, ch. 45 provided that this section should take effect on and after October 1, 1977.

**31-2612. Contingent fund — Approval of district court.** — The prosecuting attorney of each county, by and with the consent and approval first had and obtained of the district court, or any judge thereof, in and for his county, is hereby authorized and empowered to incur the expenses specified in the preceding section, so far as is necessary, to the amount annually appropriated by said board of county commissioners for said purpose. [1911, ch. 140, § 2, p. 436; reen. C.L., § 2086e; C.S., § 3663; I.C.A., § 30-2112.]

**31-2613. Contingent fund — Manner of disbursement.** — All disbursements from said fund shall be made in the usual manner by the county treasurer of each county upon the warrant of the auditor of each county, which auditor's warrant shall be executed and delivered in an amount, and to the person designated by the order of the prosecuting attorney, countersigned by any judge of the district court for that county.

Before any such approval shall be indorsed upon any such order of any prosecuting attorney so applying for the same, it shall be the duty of said

prosecuting attorney so applying for the same, to present to said judge of the district court an itemized and detailed statement of the expenses, for the payment of which he then makes application, and which statement shall be verified by said prosecuting attorney in the usual manner provided for the verification of claims against the counties of this state.

Immediately upon such judge of the district court affixing his indorsement to said order of the prosecuting attorney, said judge, if in his opinion the public interests will not be prejudiced thereby, and if he be of the opinion that the public interests will permit, shall file in the office of the county auditor of the county on which said order is drawn, said itemized and verified list so furnished by said prosecuting attorney. [1911, ch. 140, §§ 3-5, p. 436; reen. C.L., § 2086f; C.S., § 3664; I.C.A., § 30-2113.]

**31-2614. Contingent fund — Unexpended balance.** — Any sum remaining in said fund on the thirtieth day of September of each year shall then be transferred by the county auditor to the general county revenue fund of said county. [1911, ch. 140, § 6, p. 437; reen. C.L., § 2086g; C.S., § 3665; I.C.A., § 30-2114; am. 1976, ch. 45, § 26, p. 122.]

#### STATUTORY NOTES

**Effective Dates.** — Section 32 of S.L. 1976, ch. 45 read: "In order to provide an orderly sequence for implementation of the provisions of this act: (a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977; (b)

Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; (c) Sections 16, 17, 18, 19, 23, 24, 25, 28, and 29 shall be in full force and effect on and after October 1, 1977." Approved March 5, 1976.

### CHAPTER 27

#### COUNTY SURVEYOR

##### SECTION.

31-2701 — 31-2704. [Repealed.]

31-2705. Establishment of county lines.

31-2706. [Repealed.]

31-2707. County surveys to be made by professional land surveyor.

##### SECTION.

31-2708. [Repealed.]

31-2709. Surveys must conform to United States manual.

**31-2701 — 31-2704. Duties of surveyor — Lands divided by county lines. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — These sections were repealed by S.L. 1963, ch. 90, § 1. These sections comprised the following: § 31-2701 — R.S., § 2067; am. 1897, § 3, p. 19; reen. 1899, § 3, p. 295; am. and reen. R.C. & C.L., § 2087; C.S., § 3666; I.C.A., § 30-2201. § 31-2702 — 1897, § 4, p. 19; reen. 1899, § 4, p.

295; am. and reen. R.C. & C.L., § 2088; C.S., § 3667; I.C.A., § 30-2202. § 31-2703 — 1864, § 181, p. 475; R.S., § 2069; reen. R.C. & C.L., § 2089; C.S., § 3668; I.C.A., § 30-2203. § 31-2704 — 1897, § 2, p. 19; reen. 1899, § 2, p. 295; reen. R.C. & C.L., § 2090; C.S., § 3669; I.C.A., § 30-2204.

**31-2705. Establishment of county lines.** — Whenever it shall be ordered by an act of the legislature to establish the boundary line between

two (2) counties, the board of county commissioners of each county interested in the boundary shall jointly select and retain the services of a professional land surveyor to establish said boundary line, or each county shall select and retain the services of a professional land surveyor who shall jointly establish said boundary, and firmly plant and mark corners and monuments of imperishable material, also to prepare plats and field notes jointly, one (1) copy of which shall be filed with the auditor and recorder of each of the counties so interested. The fees and compensations for such surveys, plats and field notes, shall be paid out of the county treasury upon the order of the county commissioners of each county to the respective surveyors so employed. [1897, p. 19, § 6; reen. 1899, p. 295, § 6; reen. R.C. & C.L., § 2091; C.S., § 3670; I.C.A., § 30-2205; am. 1963, ch. 90, § 2, p. 286; am. 1989, ch. 101, § 1, p. 234.]

**31-2706. County commissioners to procure plats — Copies as evidence. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — This section which comprised 1897, § 7, p. 19; reen. 1899, § 7, p. 295; reen. R.C. & C.L., § 2092; C.S., § 3671; I.C.A., § 30-2206 was repealed by S.L. 1963, ch. 90, § 1, p. 286.

**31-2707. County surveys to be made by professional land surveyor.** — All surveys, maps and plats ordered by the board of county commissioners shall be made by a professional land surveyor retained by the board who shall be paid such fee as may be fixed and agreed upon. [1897, p. 19, § 8; reen. 1899, p. 295, § 8; reen. R.C. & C.L., § 2093; C.S., § 3672; I.C.A., § 30-2207; am. 1963, ch. 90, § 3, p. 286; am. 1989, ch. 101, § 2, p. 234.]

**31-2708. Commissioners to furnish blanks and books. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — This section which comprised 1897, § 9, p. 19; reen. 1899, § 9, p. 295; reen. R.C. & C.L., § 2094; C.S., § 3673; I.C.A., § 30-2208 was repealed by S.L. 1963, ch. 90, § 1, p. 286.

**31-2709. Surveys must conform to United States manual.** — No surveys or resurveys hereafter made shall be considered legal evidence in any court within the state, except such surveys as are made in accordance with the United States manual of surveying instructions, the circular on restoration of lost or obliterated corners and subdivisions of sections, issued by the general land office, or by the authority of the United States, the state of Idaho, or by mutual consent of the parties. [1897, p. 19, § 1; reen. 1899, p. 295, § 1; reen. R.C. & C.L., § 2095; C.S., § 3674; I.C.A., § 30-2209; am. 1963, ch. 90, § 4, p. 286.]



JUDICIAL DECISIONS

ANALYSIS

Evidence.  
Expert testimony.  
Government survey as criterion.  
Issues for trial court.  
Lost or obliterated corners.

**Evidence.**

This section takes precedence over § 9-408 and a survey made by a decedent that was not admissible under this section was not admissible as an exception to the hearsay rule under § 9-408. *Hook v. Horner*, 95 Idaho 657, 517 P.2d 554 (1973).

**Expert Testimony.**

The admission of the testimony of an engineer and the plat prepared by him was improper without a foundation first being laid that he was actually ascertaining the original lines of the original plat or without a prior determination that the monuments of the original plat had been lost and could not be reestablished. *Nuttsville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

**Government Survey as Criterion.**

Resurvey is not binding unless it is based upon original government survey. *Bayhouse v. Urquides*, 17 Idaho 286, 105 P. 1066 (1909).

**Issues for Trial Court.**

In a boundary dispute the trial court has to determine the location of the lines of the original plat as they are actually situated on the ground, or as located on the ground by the original survey of the plat. *Nuttsville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

**Lost or Obliterated Corners.**

Any evidence which throws light upon correctness of a survey is admissible. *Humphrey v. Whitney*, 17 Idaho 14, 103 P. 389 (1909).

Correct location of a corner may depend on whether it is a lost or an obliterated corner. Lost corner is one whose position cannot be determined beyond reasonable doubt, either from original marks or reliable marks or

reliable external evidence. Obliterated corner is one where no visible evidence remains of the work of original surveyor in establishing it. *Craven v. Lesh*, 22 Idaho 463, 126 P. 774 (1912).

Where stone placed by government surveyor marking a quarter-section corner is not susceptible of location, boundary is determinable by selecting point equidistant between section corners. *Case v. Ericson*, 44 Idaho 686, 258 P. 536 (1927).

Where government corner has been merely obliterated, but not lost, purpose of resurvey is to discover where original lines ran and not to correct any inaccuracies which might have occurred in original survey. *White v. Garrett*, 49 Idaho 136, 286 P. 362 (1930).

Bureau of Land Management publications are not statutes and they may not be utilized to establish burdens of proof in real property disputes involving lost or obliterated corners. *State ex rel. Evans v. Barnett*, 116 Idaho 429, 776 P.2d 438 (1989).

Where property owners asserted highway district was attempting to widen the highway onto their property, the injunction precluding the expansion was proper, because testimony and evidence from old survey records established that the common quarter corner between two sections was a lost corner, rather than an existent corner or an obliterated corner, and that a surveyor in 1956 failed to follow the requirements of the United States Manual of Surveying Instructions for the Survey of the Public Lands of the United States in attempting to re-establish the corner. *Henrickson v. Nampa Highway Dist.*, 139 Idaho 677, 85 P.3d 653 (2004).

**Cited in:** *State ex rel. Evans v. Barnett*, 114 Idaho 355, 757 P.2d 218 (Ct. App. 1988).

CHAPTER 28

CORONER

SECTION.

- 31-2801. Inquests.
- 31-2802. Burial of unclaimed bodies.
- 31-2803. Disposal of property found on corpse.
- 31-2804. Verified statement required of coroner.
- 31-2805. District judge or whomever he assigns to act as coroner.

SECTION.

- 31-2806. Coroner to act as substitute for sheriff.
- 31-2807. Powers when acting as sheriff.
- 31-2808. Making final disposition of dead human bodies prohibited.
- 31-2809. Coroner may appoint deputies.

**31-2801. Inquests.** — The coroner must hold inquests as prescribed in the Penal Code. [R.S., § 2080; reen. R.C. & C.L., § 2096; C.S., § 3675; I.C.A., § 30-2301.]

#### STATUTORY NOTES

**Cross References.** — Absence from state restricted, § 31-2013; leave of absence, § 31-847.

Coroner's inquests, § 19-4301 et seq.

County commissioners to audit accounts of county officers, § 31-809.

Election, § 34-622.

Misbehavior in office a contempt, § 7-601.

Nominations, §§ 34-701 — 34-708.

Oaths, county officers may administer and certify, § 31-2011.

Official bond, amount, § 31-2015.

Recall elections, §§ 34-1701 — 34-1715.

Salary of coroner, § 31-3106.

**Compiler's Notes.** — The Penal Code referred to in this section is no longer retained as a separate code. It comprises substantially the matter contained in Title 18 of this compilation.

#### RESEARCH REFERENCES

**A.L.R.** — Liability for wrongful autopsy, 18 A.L.R.4th 858.

**31-2802. Burial of unclaimed bodies.** — When no person takes charge of the body of the deceased, the coroner must cause the body to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county. [1875, p. 566, § 22; am. R.S., § 2081; reen. R.C. & C.L., § 2097; C.S., § 3676; I.C.A., § 30-2302; am. 2002, ch. 57, § 1, p. 126.]

#### STATUTORY NOTES

**Cross References.** — Burial of indigents, coroners may collect claims for, § 31-1504;

coroners released from liability to reimburse counties, § 31-1505.

#### JUDICIAL DECISIONS

##### **Extra Compensation Prohibited.**

Where the county coroner files claim for burial of indigents on behalf of his private undertaking business, the claim is not for

services incident to his office and this statute is not involved. *Benewah County v. Mitchell*, 57 Idaho 1, 61 P.2d 284 (1936).

**31-2803. Disposal of property found on corpse.** — The coroner must within thirty (30) days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased, any money or other property found upon the body. [1875, p. 566, § 15; R.S., § 2082; reen. R.C. & C.L., § 2098; C.S., § 3677; I.C.A., § 30-2303.]

#### STATUTORY NOTES

**Cross References.** — County treasurer disposing of money found on dead body, §§ 31-2117, 31-2118.

**31-2804. Verified statement required of coroner.** — Before auditing or allowing the accounts of the coroner, the commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of a deceased person which has come into his possession since his last statement.

2. The disposition made of such property. [1864, p. 566, § 18; R.S., § 2083; reen. R.C. & C.L., § 2099; C.S., § 3678; I.C.A., § 30-2304.]

**31-2805. District judge or whomever he assigns to act as coroner.** — If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any district judge or whomever he assigns for the county, with the like authority, and subject to the same obligations and penalties, as the coroner. [1875, p. 566, § 19; am. R.S., § 2084; reen. R.C. & C.L., § 2100; C.S., § 3679; I.C.A., § 30-2305; am. 1970, ch. 120, § 12, p. 284.]

**31-2806. Coroner to act as substitute for sheriff.** — The coroner shall be authorized to act as the substitute for the county sheriff when the sheriff declares he is disqualified from acting due to a conflict of interest in a proceeding or matter; provided, however, that the senior deputy sheriff, as defined in section 31-2006, Idaho Code, shall temporarily fill the vacancy created by the death, absence or resignation of the sheriff. [I.C., § 31-2806, as added by 1992, ch. 95, § 2, p. 309.]

#### STATUTORY NOTES

**Cross References.** — Elisors, §§ 31-2218, 31-2221.

Process to be executed by coroner when sheriff a party, § 31-2217.

**Prior Laws.** — Former § 31-2806, which

comprised 1875, p. 566, § 2; am. R.S., § 2085; reen. R.C. & C.L., § 2101; C.S., § 3680; I.C.A., § 30-2306 was repealed by S.L. 1992, ch. 95, § 1.

#### JUDICIAL DECISIONS

##### **Employment of Coroner.**

Martial law having been declared to exist in a certain county, and sheriff having been detained by the military authorities, district court has power to direct coroner to perform

the duties of office of sheriff. *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

When sheriff is disqualified, his deputy is also disqualified. *Davis v. Bach*, 33 Idaho 551, 196 P. 673 (1921).

**31-2807. Powers when acting as sheriff.** — Whenever the coroner acts as sheriff, he possesses the powers, and may perform all the duties, of sheriff, and is liable on his official bond, in like manner as a sheriff would be; and is entitled to the same fees as are allowed by law to the sheriff for similar services. [1875, p. 566, § 3; am. R.S., § 2086; reen. R.C. & C.L., § 2102; C.S., § 3681; I.C.A., § 30-2307.]



## STATUTORY NOTES

**Cross References.** — Fees of sheriff, § 31-3203.

Sheriff's duties, § 31-2202.

**31-2808. Making final disposition of dead human bodies prohibited.** — No coroner or person acting as coroner who is a licensed funeral director or a licensed mortician, owner, proprietor or employee of any establishment engaged in making final disposition of dead human bodies, and no establishment with which such coroner or person acting as coroner is associated, shall, except for ambulance services, perform any of the services of a funeral director or mortician or furnish any materials connected with or incidental to the final disposition of the body of any person whose death is required by law to be investigated by such coroner or other person acting in that capacity. Any person who violates this section shall be guilty of a misdemeanor. Provided, however, that the provisions of this section shall not be applicable in counties wherein there is only one (1) licensed funeral establishment. [I.C., § 31-2808, as added by 1959, ch. 160, § 1, p. 381; am. 1994, ch. 105, § 4, p. 234; am. 2002, ch. 58, § 1, p. 126.]

## STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1959, force and effect from and after January 1, ch. 160 provided such act should be in full 1961.

## RESEARCH REFERENCES

**A.L.R.** — Liability for wrongful autopsy, 18 A.L.R.4th 858.

**31-2809. Coroner may appoint deputies.** — A coroner may appoint a deputy or deputies as he deems necessary. Deputy coroners shall be paid at a rate fixed by the county commissioners. [I.C., § 31-2809, as added by 1970, ch. 82, § 1, p. 201.]

## CHAPTER 29

## COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION

## SECTION.

31-2901. [Obsolete.]

**31-2901. Powers and duties. [Obsolete.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section, comprising R.C. & C.L., § 2103; C.S., § 3687; I.C.A., § 30-2401 relating to the county superintendent of public instruction is deemed obsolete. Originally under Const., art. 18, § 6, the county superintendent of public instruc-

tion was a constitutional elective officer. However, an amendment to such constitutional provision was approved at the general election on November 2, 1948, which deleted "county superintendent of public instruction" from the list of such officers. S.L. 1963, ch. 13

providing a new education code as set forth in title 33 makes no provision for a county superintendent of public instruction.

CHAPTER 30

CONSTABLES

SECTION.

31-3001 — 31-3019. [Repealed.]

31-3001. Duties of justices of the peace. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised R.S., § 2092; reen. R.C. & C.L., § 2104; C.S., § 3683; I.C.A., § 30-2501; am. 1949, ch. 57, § 1, p. 101, was repealed by S.L. 1969, ch. 111, § 1.

31-3002 — 31-3011. Constables. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised 1864, p. 475, §§ 154 — 60; 1869, p. 123, § 1; 1907, p. 158, §§ 1, 2; R.S., §§ 2090, 2091, 2093 — 2098; am. and reen. R.C. & C.L., §§ 2105 — 2114; C.S., §§ 3684 — 3693; I.C.A., §§ 30-2502 to 30-2511; am. 1965, ch. 127, § 1, p. 255; am. 1969, ch. 119, §§ 1-4, p. 378, were repealed by S.L. 1989, ch. 43, § 1.

31-3012 — 31-3019. Justices of the peace — Number — Appointment — Compensation — Removal. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised S.L. 1959, ch. 221, §§ 1-8, p. 484, were repealed by S. L. 1969, ch. 111, §§ 2-9.

CHAPTER 31

SALARIES OF OFFICERS

SECTION.

31-3101. Officers to receive salaries and account for fees.  
31-3102. Refusal to account is embezzlement.  
31-3103 — 31-3105. [Repealed.]  
31-3106. Salaries of county officers.  
31-3107. Deputies and assistants — Appointment and compensation.

SECTION.

31-3108. Counties organized in the future.  
31-3109 — 31-3112. [Repealed.]  
31-3113. Contracted duties of prosecuting attorneys with cities.

**31-3101. Officers to receive salaries and account for fees.** — The salaries of county officers as full compensation for their services must be paid monthly from the county treasury, upon the warrants of the county auditor, and it shall not be necessary for the board of commissioners to allow or audit the claims for such salaries when the salaries of such officers are fixed by law or have been fixed or approved by action of the board of

commissioners. All actual and necessary expenses incurred by any county officer or deputy in the performance of his official duty shall be a legal charge against the county, and shall be certified by receipts to the county auditor. The county auditor shall then issue a county warrant in the amount so certified, payable to the officer or deputy submitting the certification, and the warrant paid shall be charged against said officer's budget. When any such officer or deputy shall use his private car as a means of travel in the performance of his official duty the actual and necessary expense of the use of such car shall be determined by the county commissioners of each county and allowance made therefor at a rate for each mile driven shall be applied uniformly to each officer or deputy in that county and such allowance shall be the full amount allowable for travel expense when such car is used. All fees which may come into his hands from whatever source shall be turned into the county treasury daily, weekly, monthly, or quarterly as determined by the county commissioners. He shall, at least quarterly, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all fees received, which must be audited by the board as other accounts. [1899, p. 405, § 1; reen. R.C. & C.L., § 2115; C.S., § 3694; am. 1929, ch. 21, § 1, p. 22; I.C.A., § 30-2601; am. 1935, ch. 25, § 1, p. 41; am. 1961, ch. 15, § 1, p. 15; am. 1974, ch. 231, § 1, p. 1588; am. 1980, ch. 182, § 1, p. 403.]

### STATUTORY NOTES

**Cross References.** — County officers and deputies, payment of salaries, Const., Art. 18, § 7.

County officers and deputies to keep account of fees, § 59-1010.

**Effective Dates.** — Section 2 of S.L. 1974, ch. 231 declared an emergency. Approved April 3, 1974.

### JUDICIAL DECISIONS

#### ANALYSIS

Accounting for fees.  
Accounts of officers.  
Additional employees.  
Assessor.  
Constitutionality.  
Liability of sureties.  
Sheriff.

#### Accounting for Fees.

Fees "received" by officer for which he must account to county include fees earned, though not collected, by officer. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

Fees received by county treasurer in acting as ex officio public administrator must be accounted for and reported to county and cannot be retained by officer for his personal or individual use. *In re Rice*, 12 Idaho 305, 85 P. 1109 (1906).

It seems clear that the fees referred to in this section are only those which come into the officer's hands as fees, and not money paid

him by some other officer, though the money may have been received by the latter as fees. *Power County v. Fidelity & Deposit Co.*, 44 Idaho 609, 260 P. 152 (1927).

#### Accounts of Officers.

Bill of county officers for expenses incurred in his official capacity while on official business can be considered by commissioners as part of the officer's quarterly statement only and cannot be made an independent claim or account. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

Charge made by county officer for living expenses is not an expense incurred in perfor-



mance of official duty such as to be payable by county. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

It should fully appear from the officer's quarterly statement in what manner and for what reasons expenses presented in such statement were incurred. The statement should be sworn to and be accompanied by proper vouchers proving disbursements. Claim of an officer presented in the following form: "August 13, State v. Dan Hopkins, hotel and horse fee, \$ 15.50," is a "lump sum" and should not be considered. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

Account of officer against county presented in the following form: "Mileage, eight miles, serving subpoenas, \$2.80," is too indefinite to answer the requirements of law. *Ellis v. Bingham County*, 7 Idaho 86, 60 P. 79 (1900).

Account of officer against county for expense presented in the following form: "State of Idaho v. James Southwick, et al., serving nine warrants of arrest, \$18," is vague and indefinite. Such account should specify names of defendants arrested, and show in what courts the action was pending and specify in general terms the charge in the warrant against the parties arrested. *Ellis v. Bingham County*, 7 Idaho 86, 60 P. 79 (1900).

#### **Additional Employees.**

Additional clerical help cannot lawfully be employed by county officers without authority from the board of county commissioners (Const., art. 18, § 6). *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

#### **Assessor.**

Expense incurred by county assessor for extra help in his office without authority from county commissioners as required by § 31-3107, or expense of employing counsel to compel the board to allow such claims, is not such a necessary expense within the meaning of this section, and the Constitution, as may become a legal charge against the county.

*Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

County assessor had no authority, without the consent of the board of county commissioners, to employ an attorney to prosecute a claim against the county for compensation for extra clerical help in his office. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

#### **Constitutionality.**

Act of which this section was the first section, 1899, p. 405, is constitutional except insofar as it authorizes county commissioners to fix their own salaries. *Stookey v. Board of Comm'rs*, 6 Idaho 542, 57 P. 312 (1899).

#### **Liability of Sureties.**

Sureties on official bond are not liable for moneys not legally received by officers as part of duties of office. *Power County v. Fidelity & Deposit Co.*, 44 Idaho 609, 260 P. 152 (1927).

#### **Sheriff.**

Sheriff's compensation is limited to his salary and expenses as fixed by the commissioners and he is not entitled to extra compensation for transporting prisoners to state prison. *Nez Perce County v. Bent*, 53 Idaho 787, 27 P.2d 979 (1933).

Sheriff who made an illegal deposit, within section 18-5701, of fees belonging to county is liable to his surety for funds paid by them on county's demand. *Fidelity & Deposit Co. v. Mason*, 55 Idaho 397, 42 P.2d 486 (1935).

The failure of county to compel preference of legal deposit of fees by sheriff in insolvent bank did not relieve liability of sheriff to surety for money paid county, when sheriff failed to assert preference on filing claim with receiver of bank. *Fidelity & Deposit Co. v. Mason*, 55 Idaho 397, 42 P.2d 486 (1935).

**Cited in:** *McRoberts v. Hoar*, 28 Idaho 163, 152 P. 1046 (1915); *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962); *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

### **RESEARCH REFERENCES**

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political

Subdivisions, § 225 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 107-121.

**31-3102. Refusal to account is embezzlement.** — Any county officer or deputy who shall neglect or refuse to account for and pay into the county treasury any money received as fees or compensation in excess of his actual and necessary expenses, incurred in the performance of his official duties, within ten (10) days after his quarterly settlement with the county, shall be guilty of embezzlement of public funds, and be punishable as provided for such offense. [1899, p. 405, § 2; reen. R.C. & C.L., § 2116; C.S., § 3695; I.C.A., § 30-2602.]

### STATUTORY NOTES

**Cross References.** — Embezzlement of public funds, Const., Art. 18, § 9. Theft by embezzlement, § 18-2403.

### JUDICIAL DECISIONS

**Cited in:** Fidelity & Deposit Co. v. Mason, 55 Idaho 397, 42 P.2d 486 (1935).

## 31-3103 Salaries of commissioners — Classification of counties. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised R.C., § 2117; am. 1909, p. 147, § 1; am. 1911, ch. 160; am. 1913, ch. 194, § 1; am. 1917, ch. 85; C.L., § 2117; C.S., § 3696; am. 1921, ch. 230, § 1; am. 1923, ch. 195, § 1; am. 1925, ch. 176, § 1; am. 1927, ch. 112, § 1; am. 1929, ch. 172, § 1; I.C.A., § 30-2603; am. 1933, ch. 139, § 1; am. 1937, ch. 186, § 1; am. 1939, ch. 45, § 1; am. 1941, ch. 126, § 1; am. 1943, ch. 130, § 1; am. 1945, ch. 182, §§ 1-13 and am. 1947, ch. 208, §§ 1-19, was repealed by § 4 of S.L. 1949, ch. 205.

## 31-3104. Salaries of the county commissioners — Schedule. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised I.C., § 31-3104, as added by 1974, ch. 304, § 3, p. 1785; am. 1975, ch. 267, § 1, p. 718; am. 1976, ch. 302, § 1, p. 1039; 1976, ch. 320, § 1, p. 1091; 1976, ch. 333, § 1, p. 1120; am. 1977, ch. 158, § 1, p. 408; am. 1978, ch. 266, § 1, p. 595; am. 1978, ch. 352, § 1, p. 934; am. 1979, ch. 276, § 1, p. 713; am. 1980, ch. 258, § 1, p. 671; am. 1980, ch. 374, § 1, p. 957; am. 1981, ch. 335, § 1, p. 698; am. 1982, ch. 261, § 1, p. 671 was repealed by S.L. 1982, ch. 191, § 2, effective October 1, 1982. For present law see § 31-3106.

## 31-3105. Commissioners full time officers in certain counties. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.** — This section comprising 1913, ch. 194, § 2, p. 648; am. 1917, ch. 85, last two paragraphs, p. 301; reen. C.L., § 2117b; C.S. § 3698; I.C.A., § 30-2605; am. 1933, ch. 78, § 1, p. 129; am. 1949, ch. 205, § 6, p. 428; am. 1967, ch. 235, § 1, p. 693; am. 1967 (1st E. S.), ch. 11, § 1, p. 38 was repealed by S.L. 1974, ch. 54, § 1.

**31-3106. Salaries of county officers.** — It shall be the duty of the board of county commissioners of each county, through the county budget process, as detailed in chapter 16, title 31, Idaho Code, to fix the annual salaries of the several county officers as of and from October 1 for the next ensuing year. [1899, p. 405, § 3; compiled and am. R.C., § 2118; am. 1909, p. 220, § 1; am. 1911, ch. 103, § 1, p. 345; compiled and reen. C.L., § 2118; C.S., § 3699; am. 1929, ch. 157, § 4, p. 285; I.C.A., § 30-2606; am. 1937, ch. 73, § 1, p. 98; am. 1941, ch. 142, § 2, p. 277; am. 1943, ch. 155, § 1, p. 312; am. 1945, ch. 9, § 1, p. 12; am. 1947, ch. 78, § 1, p. 127; am. 1949, ch. 211,

§ 1, p. 445; am. 1951, ch. 74, § 1, p. 115; am. 1951, ch. 293, § 1, p. 649; am. 1953, ch. 117, § 1, p. 170; am. 1955, ch. 174, § 1, p. 353; am. 1957, ch. 313, § 1, p. 671; am. 1959, ch. 21, § 1, p. 50; am. 1961, ch. 4, § 1, p. 6; am. 1963, ch. 304, § 1, p. 794; am. 1967, ch. 295, § 1, p. 842; am. 1969, ch. 257, § 1, p. 793; am. 1971, ch. 110, § 1, p. 233; am. 1977, ch. 140, § 1, p. 301; am. 1979, ch. 64, § 1, p. 168; am. 1980, ch. 228, § 1, p. 510; am. 1982, ch. 191, § 3, p. 515.]

### STATUTORY NOTES

**Cross References.** — Deputies, salary, § 31-2602.

Sheriff's revolving travel fund, § 31-1801 et seq.

**Effective Dates.** — Section 4 of S.L. 1949, ch. 211 declared an emergency. Approved March 14, 1949.

Section 4 of S.L. 1951, ch. 74 declared an emergency. Approved March 2, 1951.

Section 4 of S.L. 1951, ch. 293 declared an emergency. Approved March 22, 1951.

Section 4 of S.L. 1953, ch. 117 declared an emergency. Approved March 10, 1953.

Section 4 of S.L. 1955, ch. 174 declared an

emergency. Approved March 15, 1955.

Section 2 of S.L. 1957, ch. 313 declared an emergency. Approved March 25, 1957.

Section 2 of S.L. 1959, ch. 21 declared an emergency. Approved February 21, 1959.

Section 2 of S.L. 1961, ch. 4 declared an emergency. Approved January 23, 1961.

Section 2 of S.L. 1963, ch. 304 declared an emergency. Approved March 27, 1963.

Section 2 of S.L. 1965, ch. 310 declared an emergency. Approved March 29, 1965.

Section 2 of S.L. 1971, ch. 110 declared an emergency. Approved March 12, 1971.

### JUDICIAL DECISIONS

#### ANALYSIS

Duty of commissioners.

Power of court.

Power to fix salaries.

Sheriff.

#### Duty of Commissioners.

This act does not delegate to county commissioners legislative power in the matter of fixing salaries of county officers, but a quasi-judicial power under which commissioners should take into consideration the various elements which go to determine what salary should be paid, and from their determination an appeal lies to district court as in other cases. *Reynolds v. Board of County Comm'rs*, 6 Idaho 787, 59 P. 730 (1899).

In fixing salaries of county officers, only duty of board is to fix time when action shall be taken and maximum and minimum limitations within which each salary shall be fixed. *Criddle v. Board of County Comm'rs*, 42 Idaho 811, 248 P. 465 (1926).

#### Power of Court.

Court should not revise action of board in fixing salaries, in absence of clear evidence of abuse of discretion or disregard of statute. *Criddle v. Board of County Comm'rs*, 42 Idaho 811, 248 P. 465 (1926).

Discretion as to amounts of salary is specifically vested in board, and abuse of such discretion is not shown by fact that court would have exercised different discretion.

*Criddle v. Board of County Comm'rs*, 42 Idaho 811, 248 P. 465 (1926).

#### Power to Fix Salaries.

The legislature has authority to provide by statute the maximum and minimum salary of county officers, and may vest in the boards of county commissioners the discretionary authority of determining the amount of salary of county officers within the limit of such maximum and minimum salary, except the salary of such county commissioners. *Stookey v. Board of Comm'rs*, 6 Idaho 542, 57 P. 312 (1899).

Public policy forbids that any officer be empowered to fix his own compensation. *Stookey v. Board of Comm'rs*, 6 Idaho 542, 57 P. 312 (1899).

#### Sheriff.

The county sheriff is a county officer whose fixed annual salary is to be set by the county commissioners. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

A sheriff's salary, which was set in September during the budget process rather than in April as formerly required by this section, was



nonetheless "fixed" for purposes of Const., Art. 18, § 7, requiring fixed annual salaries, and since the sheriff's salary was fixed, it was protected within the meaning of Const., Art. 18, § 7 and could not be decreased during the fiscal year. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

**Cited in:** *Mombert v. Bannock County*, 9 Idaho 470, 75 P. 239 (1904); *Etter v. Board of County Comm'rs*, 44 Idaho 192, 255 P. 1095 (1927); *Nez Perce County v. Dent*, 53 Idaho 787, 27 P.2d 979 (1933); *Planting v. Board of County Comm'rs*, 95 Idaho 484, 511 P.2d 301 (1973).

### OPINIONS OF ATTORNEY GENERAL

County commissioners have power to authorize appointment of deputies and employees for other county offices, to set salaries for these deputies and employees, and to insure that their work schedules are in compliance with the Fair Labor Standards Act. To the extent the commissioners determine that a countywide personnel system is the most ef-

ficient and professional way to carry out these responsibilities, commissioners would have power to create such a system and to hire employees to staff it; however, the commissioners could not use such a system to control the other county officers or to judge their job performance. OAG 86-10.

### RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political

Subdivisions, § 225 et seq.

**C.J.S.** — 20 C.J.S., Counties, §§ 107-118.

**31-3107. Deputies and assistants — Appointment and compensation.** — The sheriff, the assessor, the treasurer and ex officio tax collector and the clerk of the district court and ex officio auditor and recorder shall be empowered by the board of county commissioners to appoint such deputies and clerical assistants as the business of their offices may require, and deputies to receive such remuneration as may be fixed by said board of county commissioners, which remuneration shall be paid monthly in the same manner as the salaries of the county officers are paid. [1899, p. 405, § 4; reen. R.C., § 2119; am. 1909, p. 330, § 1; am. 1913, ch. 127, § 1, p. 474; compiled and reen. C.L., § 2119; C.S., § 3700; am. 1929, ch. 83, § 1, p. 134; I.C.A., § 30-2607; am. 1959, ch. 111, § 1, p. 237.]

### STATUTORY NOTES

**Cross References.** — General power of county officers to appoint deputies, § 31-2003; Const., Art. 18, § 6.

Prosecuting attorneys, salaries of deputies to be fixed by county commissioners, § 31-2602.

**Effective Dates.** — Section 2 of S.L. 1959, ch. 111 declared an emergency. Approved March 10, 1959.

### JUDICIAL DECISIONS

#### ANALYSIS

Authority to arrest.

Clerk of court.

— Hiring decisions.

District court's authority to supervise.

Extra help.

Form of application.

Method exclusive.

Sheriff.

### **Authority to Arrest.**

The state presented undisputed evidence that the county sheriff appointed the officer as a special deputy sheriff and § 67-2337 provides that peace officers may perform their functions and duties outside of the limits of their respective city or political subdivision at the request of the chief law enforcement officer of another city or political subdivision; therefore, because officer's assistance was requested by the county sheriff, he had authority to stop and arrest defendant outside of the city limits and consequently, the arrest was valid. *State v. Goerig*, 121 Idaho 108, 822 P.2d 1005 (Ct. App. 1991).

### **Clerk of Court.**

The clerk of the court, by virtue of the office created in Const., Art. 5, § 16, also is possessed of other powers and duties which are nonjudicial, but the clerk is nevertheless and foremost a judicial official. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

### **—Hiring Decisions.**

A county board of commissioners does not have the authority to promulgate policies or issue orders which limit or direct the hiring decisions of a clerk of the district court. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

### **District Court's Authority to Supervise.**

The district judge's authority to supervise the clerk of the district court in the discharge of clerical duties does not include the authority or power to dictate to the clerk who shall be hired as an assistant or as a deputy. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The district judge, in the exercise of his or her supervisory power over the clerical activities of the clerk of the district court, controls the assignment of persons hired by the clerk. If the clerk makes an assignment of personnel to a judicial function which the judge finds unacceptable, the judge can refuse to accept that assignment; consequently, the district judge has the power to require a reassignment of personnel to assist in judicial-related functions. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

### **Extra Help.**

Expense incurred by county assessor for extra help in his office without authority from

county board as required by this section, or expense of employing counsel to compel board to allow such claims, is not such an actual or necessary expense within the meaning of § 31-3101 and Const., art. 18, § 7, as may become a legal charge against the county. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

### **Form of Application.**

Request by clerk of district court for power to appoint transcribing clerk is sufficient to give board jurisdiction to authorize appointment of deputy. *Dukes v. Board of County Comm'rs*, 17 Idaho 736, 107 P. 491 (1910).

Where clerk of district court files application with board of county commissioners for clerical assistance, and later files document containing arguments in favor of such relief, same is not an additional application. *Dukes v. Board of County Comm'rs*, 17 Idaho 736, 107 P. 491 (1910).

### **Method Exclusive.**

Method herein provided for furnishing assessor such clerical assistance and such deputies as the business of his office may require is exclusive. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918); *Reilly v. Board of County Comm'rs*, 29 Idaho 212, 158 P. 322 (1916).

Contract made by county commissioners for expense of person, not acting for assessor, to cruise taxable timber lands and to make reports, such person not having official or legal status, is illegal. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

### **Sheriff.**

So far as this section relates to sheriff, it has no reference to emergency cases but only to the ordinary and usual duties of the office. *Lansdon v. Washington County*, 16 Idaho 618, 102 P. 344 (1909).

Inherent power of courts of record to appoint bailiffs when exigency demands cannot be questioned, but exigency must arise from some peculiar emergency or where agency vested by law with power to appoint has neglected or refused to perform its duty. *State v. Leavitt*, 44 Idaho 739, 260 P. 164 (1927).

**31-3108. Counties organized in the future.** — Counties created or organized hereafter shall be governed by the provisions hereof, and the boards of county commissioners of such newly-created organized counties shall respectively fix and determine at their first meeting the salaries to be paid the several county officers as herein provided for. [1899, p. 405, § 5; am. and reen. R.C. & C.L., § 2120; C.S., § 3701; I.C.A., § 30-2608.]

### 31-3109 Salaries of prosecuting attorneys — Classification of counties. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section which comprised S.L. 1929, ch. 157, § 1; I.C.A., § 30-2609; am. 1933, ch. 125, § 1; am. 1943, ch. 98, § 1; am. 1945, ch. 164, § 1 and am. 1947, ch. 191 was repealed by S.L. 1949, ch. 274, § 4.

### 31-3110. Salaries of prosecuting attorneys — Schedule. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section which comprise S.L. 1929, ch. 157, § 2; I.C.A., § 30-2610; am. 1933, ch. 53, § 1 and am. 1947, ch. 191 was repealed by S.L. 1949, ch. 274, § 5.

### 31-3111. Salaries of prosecuting attorneys. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section which comprised S.L. 1949, ch. 274, § 1, p. 558; am. 1951, ch. 172, § 1, p. 367; am. 1953, ch. 265, § 1, p. 460; am. 1955, ch. 236, § 1, p. 532 was repealed by S.L. 1957, ch. 311, § 1, p. 666.

### 31-3112. Annual salaries of prosecuting attorneys. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section which comprised S.L. 1957, ch. 311, § 2, p. 666 was repealed by S.L. 1959, ch. 191, § 1, p. 421.

### 31-3113. Contracted duties of prosecuting attorneys with cities.

— Prosecuting attorneys, with the unanimous approval of the board of county commissioners, and with the consent of the prosecuting attorney, may contract with any city within the county to prosecute nonconflicting misdemeanors and infractions. [I.C., § 31-3113, as added by 1974, ch. 305, § 3, p. 1788; am. 1975, ch. 140, § 1, p. 319; am. 1975, ch. 259, § 1, p. 706; am. 1976, ch. 303, § 1, p. 1041; am. 1976, ch. 321, § 1, p. 1093; am. 1976, ch. 334, § 1, p. 1121; am. 1977, ch. 157, § 1, p. 406; am. 1978, ch. 287, § 1, p. 698; am. 1979, ch. 275, § 1, p. 711; am. 1980, ch. 259, § 1, p. 673; am. 1981, ch. 336, § 1, p. 699; am. 1982, ch. 191, § 4, p. 515; am. 1982, ch. 333, § 1, p. 840; am. 1991, ch. 274, § 1, p. 711; am. 1995, ch. 191, § 1, p. 682; am. 1996, ch. 398, § 1, p. 1329; am. 2000, ch. 116, § 1, p. 255.]

#### STATUTORY NOTES

**Cross References.** — Salaries of county officers, § 31-3106.

**Prior Laws.** — Former laws concerning the salaries of prosecuting attorneys, which were codified as § 31-3113, were:

S.L. 1960, ch. 323, § 2, which was repealed by S.L. 1963, ch. 332, § 1.

S.L. 1963, ch. 332, § 2, p. 950, which was repealed by S.L. 1965, ch. 245, § 1.

S.L. 1965, ch. 245, § 2, which was repealed by S.L. 1967, ch. 375, § 1.

S.L. 1967, ch. 375, § 1, p. 1100, which was repealed by S.L. 1969, ch. 314, § 1.

S.L. 1969, ch. 314, § 2, p. 970, as amended



by S.L. 1970, ch. 193, § 1, p. 561, which was repealed by S.L. 1971, ch. 295, § 1, p. 1110.

S.L. 1971, ch. 295, § 2, p. 1110, as amended by S.L. 1972, ch. 357, § 1, p. 1061, S.L. 1973, ch. 299, § 1, p. 631, and S.L. 1974, ch. 305, § 1, p. 1788, which was repealed by S.L. 1974, ch. 305, § 2, effective January 1, 1975. For the present law concerning salaries of county officers, see § 31-3106.

**Effective Dates.** — Section 4 of S.L. 1974, ch. 305 declared an emergency and provided that § 1 should be in full force and effect retroactive to January 1, 1974 and that §§ 2, 3 should be in full force and effect on and after January 1, 1975. Approved April 5, 1974.

Section 2 of S.L. 1975, ch. 140 declared an emergency and provided that § 1 should be in full force and effect retroactive to January 1, 1975. Approved March 26, 1975.

Section 2 of S.L. 1975, ch. 259 provided that the act would be in full force and effect January 1, 1976.

Section 2 of S.L. 1976, ch. 303 declared an emergency and provided the act should be in full force and effect on and after its approval retroactive to January 1, 1976. Approved March 31, 1976.

Section 2 of S.L. 1976, ch. 321 provided that the act shall be in full force and effect on and after January 1, 1977.

Section 2 of S.L. 1976, ch. 334 declared an emergency and provided that the act should be in full force and effect on and after its approval retroactive to January 1, 1976. Became law without governor's signature March 1, 1976. Approved April 1, 1976.

Section 2 of S.L. 1977, ch. 157 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977. Approved March 28, 1977.

Section 2 of S.L. 1978, ch. 287 read: "An emergency existing therefore [therefor],

which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactive to January 1, 1978, for Power County only. For Bonneville County only, this act shall be in full force and effect January 8, 1979. For all other counties this act shall be in full force and effect on and after October 1, 1978." Approved March 29, 1978.

Section 2 of S.L. 1979, ch. 276 provided that the act should take effect October 1, 1979.

Section 2 of S.L. 1980, ch. 217 declared an emergency. Approved March 28, 1980.

Section 2 of S.L. 1980, ch. 259, declared an emergency and provided that the act should take effect retroactively to October 1, 1979. Approved March 31, 1980.

Section 2 of S.L. 1980, ch. 344 declared an emergency. Approved April 4, 1980.

Section 2 of S.L. 1981, ch. 336 declared an emergency and provided that the act should be in full force and effect retroactive to October 1, 1980. Approved April 7, 1981.

Section 5 of S.L. 1982, ch. 191 read: "An emergency existing therefore, which emergency is hereby declared to exist, Sections 1 and 3 of this act shall be in full force and effect on and after its passage and approval. Sections 2 and 4 of this act shall be effective on and after October 1, 1982." Approved March 24, 1982.

Section 2 of S.L. 1982, ch. 333 declared an emergency and made the act effective retroactively to October 1, 1981. Approved April 1, 1982.

Section 2 of S.L. 1995, ch. 191 read: "This act shall be in full force and effect on and after January 1, 1996, for all purposes of the 1996 election, and the prosecuting attorney in Payette County shall be a full-time office commencing with the next ensuing term."

Section 2 of S.L. 2000, ch. 116 provided that the act shall be in full force and effect on and after July 1, 2000.

## JUDICIAL DECISIONS

### ANALYSIS

#### Construction.

Moneys received under contracts with municipalities.

#### Construction.

Since this section permits prosecutors to contract with municipalities to prosecute non-conflicting misdemeanors it does not require a prosecuting attorney to devote full time to the discharge of his duties. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

#### Moneys Received under Contracts with Municipalities.

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of

the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

OPINIONS OF ATTORNEY GENERAL

Contract of elected prosecuting attorney for one county to perform the duties of prosecuting attorney of another county violated the requirement of this section that such elected prosecuting attorney devote full time to the discharge of his duties as the elected prosecuting attorney because it represents the private practice of law. OAG 92-2.

The "full-time" requirement of this section prevents a full-time prosecuting attorney

from contracting as a private attorney to perform the ongoing statutory duties of a prosecuting attorney in a second county. OAG 92-2.

The legislature intended to prohibit the private practice of law on the part of those prosecutors who are required by this section to devote their full time to their elected office. OAG 92-2.

CHAPTER 32

FEES

SECTION.

- 31-3201. Clerk of district court — Fees.
- 31-3201A. Court fees.
- 31-3201B. Peace officers standards and training — Fee.
- 31-3201C. Community service fee.
- 31-3201D. County misdemeanor probation supervision fee.
- 31-3201E. Drug court and mental health court fee — Drug court and mental health court fund.
- 31-3201F. Abandoned vehicle fee.
- 31-3201G. Pilot project fee. [Effective until July 1, 2009.]
- 31-3202. Clerk of district court — Exceptions to fee schedule.
- 31-3203. Sheriff's fees.
- 31-3204. [Repealed.]
- 31-3205. Recorder's fees.
- 31-3206. Recorder — Exceptions to fee schedule.
- 31-3207. Auditor's fees.
- 31-3208, 31-3210. [Repealed.]
- 31-3211. Fees to be prepaid — Exception — Penalty for official dereliction.

SECTION.

- 31-3212. Exceptions to fee schedule — Habeas corpus — State or any county of Idaho a party — Cost of transcripts.
- 31-3213. Pensioners exempt from paying fee — Penalty for charging.
- 31-3214. Table of fees — Officers to publish — Penalty for neglect.
- 31-3215. Execution for fees.
- 31-3216. [Repealed.]
- 31-3217. Limitation on mileage of officer.
- 31-3218. Receipt for fees.
- 31-3219. Photographic copies of records — Fees.
- 31-3220. Inability to pay fees — Definitions — Affidavit.
- 31-3220A. Prisoner payment of fees at time of filing of action — Partial payment of fees — Dismissal of action.
- 31-3221. Payments to court by credit card or debit card.

**31-3201. Clerk of district court — Fees.** — (1) The clerk of the district court shall lawfully charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

- For filing and docketing abstract or transcript of judgment from another court ..... \$2.00
- For issuing execution upon an abstract or transcript of judgment and filing same on return ..... \$2.00
- For recording execution issued upon abstract or transcript of judgment, per page ..... \$2.00
- For taking affidavits, including jurat ..... \$1.00
- For taking acknowledgments, including seal ..... \$1.00
- For filing and indexing designation of agent of foreign corporation . \$2.00
- For filing and indexing notarial statement ..... \$2.00

For making copy of any file or record, by the clerk, the clerk shall charge and receive, per page ..... \$1.00

For comparing and conforming a prepared copy of any file or record, the clerk shall charge and receive, per page ..... \$ .50

For certifying the same an additional fee for certificate and seal .. \$1.00

For all services not herein enumerated, and of him lawfully required, the clerk of the district court shall demand and receive such fees as are herein allowed for similar services.

(2) All fees collected under the provisions of this section shall be paid over to the county treasurer, at the same time and in the same manner as other fees.

(3) In addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect ten dollars (\$10.00) as an administrative surcharge fee on each criminal case, and five dollars (\$5.00) on each infraction to be paid over to the county treasurer at the same time and in the same manner as other fees, for the support of the county justice fund, or the current expense fund if no county justice fund has been established, and shall collect ten dollars (\$10.00) as an administrative surcharge fee on each civil case, including each appeal, to be paid over to the county treasurer for the support of the county court facilities fund, or to the district court fund if no county court facilities fund has been established.

(4) Provided further, an additional handling fee of two dollars (\$2.00) shall be imposed on each monthly installment of criminal or infraction fines, forfeitures, and other costs paid on a monthly basis.

(5) Provided further, in addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect ten dollars (\$10.00) as an Idaho Statewide Trial Court Automated Records System (ISTARS) technology fee on each criminal and infraction offense to be paid over to the county treasurer who shall, within five (5) days after the end of the month, pay such fee to the state treasurer for deposit into the ISTARS technology fund. [1890-1891, p. 174, § 1; reen. 1899, p. 116, § 1; am. R.C., § 2121; am. 1909, p. 22, § 1; am. 1917, ch. 36, § 5, p. 83; compiled and reen. C.L., § 2121; C.S., § 3702; am. 1931, ch. 217, § 1, p. 422; I.C.A., § 30-2701; am. 1937, ch. 88, § 2, p. 117; am. 1957, ch. 242, § 1, p. 602; am. 1963, ch. 169, § 1, p. 489; am. 1969, ch. 139, § 1, p. 427; am. 1976, ch. 281, § 2, p. 962; am. 1979, ch. 219, § 1, p. 607; am. 1986, ch. 103, § 1, p. 290; am. 1990, ch. 216, § 2, p. 579; am. 1994, ch. 208, § 2, p. 656; am. 1997, ch. 28, § 2, p. 48; am. 1997, ch. 227, § 1, p. 664; am. 2005, ch. 240, § 2, p. 743.]

STATUTORY NOTES

**Cross References.** — Additional fees for code fund, § 73-213.

Additional fees for judges' retirement fund, § 1-2003.

Docketing appeals to transfer of water right referees, § 42-2505.

Quarterly return of fees to county treasury, § 31-3101.

Transcripts on appeal, I.A.R., Rule 24.

**Amendments.** — This section was

amended by two 1997 acts, ch. 28, § 2, effective July 1, 1997 and ch. 227, § 1, effective July 1, 1997 which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 28, § 2, added subsection (5).

The 1997 amendment, by ch. 227, § 1, in subsection (3) substituted "ten dollars (\$10.00)" for "five dollars (\$5.00)" in two places, deleted "or infraction" following "as an



administrative surcharge fee on each criminal" and added "and five dollars (\$5.00) on each infraction" near the beginning of the subsection preceding "to be paid over to the county treasurer."

**Compiler's Notes.** — Section 6 of S.L. 1990, ch. 216 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.** — Section 4 of S.L. 1969, ch. 139 provided that the law should become effective at 12:00 a.m. on January 11, 1971.

Section 4 of S.L. 1997, ch. 28 read: "This act shall be in full force and effect on and after July 1, 1997, and the additional fees provided for herein shall apply to criminal and infraction offenses committed on or after July 1, 1997, and shall apply to civil case filings and appearances occurring on or after July 1, 1997." Approved March 12, 1997.

## JUDICIAL DECISIONS

### Accounting for Fees.

Under Const., art. 18, § 7, all fees collected by the clerk of the district court by virtue of 43 U.S.C. § 254, for taking homestead or other land proofs or other services in connection therewith, are collected by such clerk in his

official capacity and must be turned over to the county. *Rhea v. Board of County Comm'rs*, 12 Idaho 455, 12 Idaho 460, 88 P. 89 (1907).

**Cited in:** *Elliott v. Rising*, 36 Idaho 137, 209 P. 887 (1922); *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

## OPINIONS OF ATTORNEY GENERAL

The sales tax collected for photocopies sold by county authorities is to be charged in

addition to the normal fee charged for such photocopies. OAG 84-2.

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, § 227.

**C.J.S.** — 20 C.J.S., *Counties*, § 109.

**31-3201A. Court fees.** — The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of fifty dollars (\$50.00) for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be twenty-eight dollars (\$28.00) in each case where the amount of money or damages or the value of personal property claimed does not exceed three hundred dollars (\$300). The filing fee shall be thirty dollars (\$30.00) in the following types of cases:

- (1) Where the amount of money or damages or the value of personal property claimed exceeds three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000);
- (2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

- (3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;
- (4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;
- (5) Where a case involving the administration of a decedent's estate is brought under the summary administration of small estates act;
- (6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including, but not limited to, proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;
- (7) In cases brought to determine heirship without administration;
- (8) In cases brought to determine inheritance or transfer tax;
- (9) In proceedings brought for adoption;
- (10) In proceedings brought for letters of guardianship of the person or of the estate or both.

No filing fee shall be charged in the following types of cases:

- (1) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;
- (2) In cases brought under the juvenile corrections act;
- (3) In cases brought under the child protective act.

In all cases in which a filing fee of fifty dollars (\$50.00) is paid, seventeen dollars (\$17.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; seventeen dollars (\$17.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. In all cases in which a filing fee of thirty dollars (\$30.00) is paid, four dollars (\$4.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. In all cases in which a filing fee of twenty-eight dollars (\$28.00) is paid, three dollars (\$3.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; nine dollars (\$9.00) of such filing fee shall be paid to the county treasurer who

shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(b) A fee of seventeen dollars and fifty cents (\$17.50) shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay such fee. If the magistrate court facilities are provided by the county, five dollars (\$5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and twelve dollars and fifty cents (\$12.50) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. If the magistrate court facilities are provided by a city, five dollars (\$5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents (\$2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(c) A fee of sixteen dollars and fifty cents (\$16.50) shall be paid, but not in advance, by each person found to have committed an infraction or any minor traffic, conservation or ordinance violation; provided that the judge or magistrate may in his or her discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, five dollars (\$5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and eleven dollars and fifty cents (\$11.50) of such fee shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section. If the magistrate court facilities are provided by a city, five dollars (\$5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents (\$2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and nine dollars (\$9.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section.

(d) A fee of thirty dollars (\$30.00) shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, four dollars (\$4.00) shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such fee shall be paid to the



county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(e) A fee of nine dollars (\$9.00) shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(f) A fee of twenty-five dollars (\$25.00) shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, six dollars (\$6.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; thirteen dollars (\$13.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(g) A fee of thirteen dollars (\$13.00) shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. Seven dollars (\$7.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(h) A fee of fourteen dollars (\$14.00) shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. Eight dollars (\$8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(i) A fee of fourteen dollars (\$14.00) shall be paid by any party filing a cross-claim. Eight dollars (\$8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(j) A fee of nine dollars (\$9.00) shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(k) A fee of fifteen dollars (\$15.00) shall be paid by any party appearing after judgment or applying to reopen a case. Nine dollars (\$9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

A fee of thirty-eight dollars (\$38.00) shall be paid by a party applying to reopen a divorce action or modify a divorce decree, with seventeen dollars (\$17.00) of the fee to be paid to the county treasurer for deposit in the district court fund of the county; fifteen dollars (\$15.00) of such fee to be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such fee to be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(l) A fee of fifteen dollars (\$15.00) shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court; and six dollars of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(m) A fee of fifteen dollars (\$15.00) shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. Nine dollars (\$9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(n) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(o) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(p) That portion of the filing fees required to be remitted to the state treasurer for deposit pursuant to subsections (a), (b), (c), (d) and (f) of this section shall be apportioned eighty-six percent (86%) to the state general fund and fourteen percent (14%) to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(q) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer, the county treasurer shall retain five



dollars (\$5.00), which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code, and the administration of section 18-918(7), Idaho Code, relating to the evaluation and counseling or other treatment of such persons, including the payment of the costs of evaluating and counseling or other treatment of an indigent defendant. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(r) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law. [I.C., § 31-3201A, as added by 1969, ch. 139, § 2, p. 427; am. 1971, ch. 217, § 1, p. 972; am. 1972, ch. 31, § 1, p. 45; am. 1974, ch. 157, § 1, p. 1387; am. 1976, ch. 307, § 3, p. 1052; am. 1978, ch. 72, § 1, p. 143; am. 1979, ch. 219, § 2, p. 607; am. 1980, ch. 125, § 1, p. 281; am. 1981, ch. 238, § 1, p. 478; am. 1982, ch. 353, § 11, p. 874; am. 1985, ch. 28, § 1, p. 48; am. 1988, ch. 24, § 2, p. 27; am. 1993, ch. 196, § 2, p. 535; am. 1995, ch. 223, § 2, p. 770; am. 1996, ch. 164, § 1, p. 544; am. 1996, ch. 166, § 1, p. 548; am. 1996, ch. 256, § 2, p. 837; am. 1997, ch. 28, § 3, p. 48; am. 1998, ch. 76, § 1, p. 274; am. 1998, ch. 420, § 2, p. 1323; am. 2003, ch. 237, § 3, p. 607; am. 2005, ch. 114, § 2, p. 365; am. 2005, ch. 240, § 3, p. 743; am. 2006, ch. 267, § 2, p. 828.]

### STATUTORY NOTES

**Amendments.** — This section was amended by three 1996 acts — ch. 164, § 1, ch. 166, § 1, and ch. 256, § 2, all effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendments by S.L. 1996, ch. 164, § 1 and ch. 256, § 2 while compatible do conflict, but were compiled together.

The 1996 amendment, by ch. 164, § 1, added the third sentence in present subdivision (k).

The 1996 amendment, by ch. 166, § 1, in present subdivision (q), in the second sentence, added the language beginning “, and the administration of section 18-918(5),”.

The 1996 amendment, by ch. 256, § 2, in subdivision (a), in the first paragraph substituted “\$34.00” for “\$32.00”, in the second paragraph, substituted “\$12.00” for “\$10.00” and “\$14.00” for “\$12.00”, and in the last paragraph substituted “\$34.00” for “\$32.00”, the second occurrence of “\$17.00” for “\$15.00”, “\$14.00” for “\$12.00”, “\$10.00” for “\$8.00”, “\$12.00” for “\$10.00”, and “\$9.00” for “\$7.00”; in subdivision (b), substituted “\$17.50” for “\$15.50”, deleted “or found to have committed an infraction or any minor traffic, conserva-

tion or ordinance violation” following “felony or misdemeanor,” deleted “; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee” following “unable to pay such fee”, and substituted “\$12.50” for “\$10.50” and “\$10.00” for “\$8.00”; added subdivision (c); redesignated former subdivisions (c) through (q) as present subdivisions (d) through (r); in present subdivision (d) substituted “\$14.00” for “\$12.00” and “\$10.00” for “\$8.00”; and in present subdivision (f) substituted “\$19.00” for “\$17.00” and “\$13.00” for “\$11.00”.

This section was amended by two 1998 acts — ch. 76, § 1, and ch. 420, § 2, both effective July 1, 1998, which do not conflict and have been compiled together.

The 1998 amendment, by ch. 76, § 1, in the third paragraph, substituted “\$17.00” for “\$12.00” and substituted “\$9.00” for “\$14.00”; in subsection (2), substituted “Juvenile Corrections” for “Youth Rehabilitation”; in the paragraph preceding subsection (b), substituted “\$19.00” for “\$14.00” and added “\$5.00 of such filing fee shall be paid to the county



treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARs technology fund" in two places.

The 1998 amendment, by ch. 420, § 2, in the first sentence of subsection (q), substituted "18-918(7)" for "18-918(5)" added a comma after "such persons" and deleted "for anger control and prevention," following "such persons".

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 114, § 2, revised the distribution of court filing fees in subsection (p).

The 2005 amendment, by ch. 240, § 3, redistributed several of the fees directed by this section and made stylistic changes throughout.

The 2006 amendment, by ch. 267, throughout the section increased the filing fees by \$6.00 and added the language directing that the increased fees be paid to the county treasurer for the senior magistrates judges fund.

**Legislative Intent.** — Section 1 of S.L. 1982, ch. 353 read: "By the enactment of Chapter 223, Laws of 1981, the state made a dramatic move to reduce congestion in the court system, to improve the ability of peace officers to regulate and control motor vehicle traffic, and to achieve significant economies in the administration of justice. This chapter has not yet gone into effect, since it was deliberately enacted with an effective date clause of July 1, 1982. This was done to allow those officials concerned with the administration and enforcement of the law to have time to review and study its provisions.

"It has now come to our attention that some adjustments to Chapter 223 are in order, and that other equally vital changes need to be made in other sections of the law. It is the intent of this bill to provide a means to accomplish this. This bill repeals outright several sections of Chapter 223, in order that the Idaho Code provisions amended by such sections might be left in place; this bill repeals several sections of existing Idaho Code provisions; this bill replaces some of these repealed sections; and this bill adds new sections and makes several amendments in order to make the entire concept a viable instrument. And

finally, this bill would delay the effective date of Chapter 223 from July 1, 1982 to March 1, 1983, so that all of the needed changes, revisions and amendments can function as an integrated whole."

However, § 42 of S.L. 1982, ch. 353 as amended by § 2 of S.L. 1983, ch. 2 provided that this section should become effective July 1, 1983.

**Compiler's Notes.** — The summary administration of small estates act, referred to in clause (5) of the second paragraph of subdivision (a), was repealed. For present law, see §§ 15-1-101 — 15-1-403.

Former §§ 14-114, 15-514, 15-1401, 15-1518, and 15-1709, referred to in clause (6) of the second paragraph of subdivision (a), were repealed. For present law, see §§ 15-3-301, 15-3-401 and 15-3-901.

The juvenile corrections act, referred to in clause (2) in the third paragraph of subsection (a) is compiled as chapter 5, title 28, Idaho Code.

The child protective act, referred to in clause (3) of the third paragraph of subdivision (a), is compiled as § 16-1601 et seq.

Chapters 11 and 18 of Title 15, referred to in subdivision (e), were repealed. For present law, see § 15-5-101 et seq.

**Effective Dates.** — Section 4 of S. L. 1969, ch. 139 provided that the effective date of the act should be 12:01 A.M. on January 11, 1971.

Section 2 of S.L. 1971, ch. 217 declared an emergency. Approved March 24, 1971.

Section 4 of S. L. 1976, ch. 307 declared an emergency and provided that the act should be effective upon approval retroactive to January 1, 1976. Approved April 1, 1976.

Section 2 of S.L. 1978, ch. 72 declared an emergency. Approved March 10, 1978.

Section 7 of S.L. 1979, ch. 219 provided that the act should take effect July 1, 1979.

Section 2 of S.L. 1980, ch. 125, provided that the act should take effect on and after October 1, 1980.

Section 4 of S.L. 1997, ch. 28 read: "This act shall be in full force and effect on and after July 1, 1997, and the additional fees provided for herein shall apply to criminal and infraction offenses committed on or after July 1, 1997, and shall apply to civil case filings and appearances occurring on or after July 1, 1996." Approved March 12, 1997.

## JUDICIAL DECISIONS

**Cited in:** State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978); Estate of Thompson v. Turner, 107 Idaho 470, 690 P.2d 925 (1984).

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Findings required.  
In general.

**Findings Required.**

Where the order of probation provided that the defendant shall pay costs in the amount of \$677.74 and the record did not show if, or when, the costs were taxed, or if appellant had opportunity to challenge the items taxed, the cause would be remanded to the trial court to consider and determine if costs were properly taxed against appellant and to make appropriate findings and order in connection therewith. *State v. Bassett*, 86 Idaho 277, 385 P.2d 246 (1963).

**In General.**

Jury costs are a general expense of maintaining the system of courts and the administration of justice and an ordinary burden of government. *State v. Hanson*, 92 Idaho 665, 448 P.2d 758 (1968).

The defendant must have an opportunity to challenge the assessment of costs. *State v. Hanson*, 92 Idaho 665, 448 P.2d 758 (1968).

**31-3201B. Peace officers standards and training — Fee.** — The court shall charge a fee of ten dollars (\$10.00) for peace officers standards and training purposes to be paid by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation, except for cars unlawfully left or parked or when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the peace officers standards and training fund. [I.C., § 31-3201B, as added by 1983, ch. 117, § 3, p. 258; am. 1989, ch. 84, § 1, p. 145; am. 1994, ch. 193, § 1, p. 623; am. 2005, ch. 114, § 3, p. 365.]

## STATUTORY NOTES

**Effective Dates.** — Section 4 of S.L. 1983, ch. 117 declared an emergency and provided

that section 3 of the act should be in full force and effect on and after May 1, 1983.

## OPINIONS OF ATTORNEY GENERAL

If motor vehicle registration fees were the sole source of funding for the administration of the department of law enforcement, such funds could not be used to administer programs unrelated to highway construction, repair, maintenance or traffic supervision; however, the department of law enforcement's administration is currently funded from both motor vehicle registration fees and from non-

dedicated funds. If the legislative appropriations for administration of the department of law enforcement allocate an amount of non-dedicated funds sufficient to administer programs unrelated to highway construction, repair, maintenance, or traffic supervision, such appropriations would probably not be held to violate Const., Art. 7, § 17. OAG 84-3.

**31-3201C. Community service fee.** — The court shall charge a fee of sixty cents (60¢) per hour of community service to be remitted to the state insurance fund for purposes of providing worker's compensation insurance

for persons performing community service. This per hour fee shall be paid by each person found guilty of any felony or misdemeanor and community service is provided as part of the sanction or as a condition of a withheld judgment or probation. The court may waive such fee if it determines the person is indigent and unable to pay such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the district court and deposited in the county treasury for payment to the state insurance fund. [I.C., § 31-3201C, as added by 1994, ch. 233, § 1, p. 724; am. 2000, ch. 33, § 1, p. 61.]

**31-3201D. County misdemeanor probation supervision fee. —**

Any person under a supervised probation program for a misdemeanor offense shall be required to pay not more than thirty-five dollars (\$35.00) per month, or such lesser sum as determined by the administrative judge of the judicial district, as a misdemeanor probation supervision fee. Any failure to pay such fee shall constitute grounds for the revocation of probation by the court, but this shall not be the exclusive remedy for its collection. The court for good cause may exempt a person from the payment of all or any part of the foregoing fee.

The fee imposed under this section shall be paid to the clerk of the district court for deposit into the county misdemeanor probation fund which is hereby created in each county, or at the option of the board of county commissioners, deposited in the county justice fund to be used for the purposes described in this section. Moneys from this fee may be accumulated from year to year and shall be expended exclusively for county misdemeanor probation services and related purposes. [I.C., § 31-3201D, as added by 1998, ch. 144, § 1, p. 515.]

**31-3201E. Drug court and mental health court fee — Drug court and mental health court fund. —** Each person admitted into a drug court or mental health court shall pay a drug court and mental health court fee in an amount not to exceed three hundred dollars (\$300) per month or a lesser amount as set by the administrative district judge for participants in the drug court and mental health court. For good cause, the judge presiding over a drug court or mental health court may exempt a participant from paying all or a portion of the drug court and mental health court fee. The fee imposed under this section shall be paid to the clerk of the district court for deposit into the county drug court and mental health court fund which is hereby created in each county that has a drug court or mental health court. Moneys in this fund may be accumulated from year to year and shall be expended exclusively for expenses incurred in connection with the drug court or mental health court including, but not limited to, substance abuse treatment, mental health treatment, drug testing, supervision and private counseling services utilized by the drug court or mental health court. Any failure to pay the drug court and mental health court fee may constitute grounds for termination from drug court or mental health court by the court, provided this shall not be the exclusive remedy for collection of the fee. If a participant is terminated from the drug court or mental health court prior



to successful completion of the program and a judgment of conviction is entered against the defendant, any unpaid drug court and mental health court fee shall be ordered by the court in the judgment of conviction, provided the court may order such fee to be waived if the court determines that the person is indigent and unable to pay the fee. Such fee shall be in addition to all other fines and fees levied, and the payment of such fee may also be ordered as a term and condition of probation. [I.C., § 31-3201E, as added by 2001, ch. 337, § 2, p. 1196; am. 2004, ch. 249, § 1, p. 714; am. 2005, ch. 358, § 9, p. 1130.]

**31-3201F. Abandoned vehicle fee.** — The court shall charge a fee of one hundred fifty dollars (\$150) for reimbursement of expenses incurred in the disposition of an abandoned vehicle to be paid by each person found to have committed a traffic infraction according to the provisions of section 49-1802, Idaho Code. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the county treasurer who shall, within fifteen (15) days after the end of the month, pay such fees to the state treasurer for deposit to the abandoned vehicle trust account. Each fee shall be accompanied by a record of the conviction. [I.C., § 31-3201F, as added by 2002, ch. 366, § 1, p. 1032.]

**31-3201G. Pilot project fee. [Effective until July 1, 2009.]** — (1) In addition to any other filing and reporting fees applicable to guardianships and conservatorships, the court shall charge the following fees:

- (a) Fifty dollars (\$50.00) for filing cases involving guardianships or conservatorships;
- (b) Forty-one dollars (\$41.00) for reports required to be filed with the court by conservators; and
- (c) Twenty-five dollars (\$25.00) for reports required to be filed with the court by guardians.

(2) The additional fees set forth in paragraphs (a), (b) and (c) of subsection (1) of this section shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in the guardianship pilot project fund, which is hereby created in the state treasury. The fund shall be administered by the Idaho supreme court and shall consist of fees as provided in this section and any funds as may be appropriated by the legislature, grants, donations and moneys from other sources.

(3) Moneys in the fund shall be expended exclusively for the development of a pilot project which will operate in at least three (3) Idaho counties and which shall be designed to improve reporting and monitoring systems and processes for the protection of persons and their assets where a guardian or conservator has been appointed. Elements of the pilot project may include, but are not limited to, the following:

- (a) The adoption of standards of practice for guardians;
- (b) A requirement that guardians be registered;
- (c) Consideration of an office of the public guardian in counties in which the pilot project operates;
- (d) A review of the strengths of Idaho law regarding the treatment and care of developmentally disabled persons; and

(e) If federal or grant funding is available, funding for adult protection services to seek guardians in cases for which volunteers cannot be enlisted.

(4) The supreme court shall make a report in January 2007, and annually thereafter to the senate judiciary and rules committee and the house judiciary, rules and administration committee regarding the progress of the pilot project. [I.C., § 31-3201G, as added by 2005, ch. 55, § 1, p. 209.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 2005, ch. 55 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2009, and any

moneys remaining in the guardianship pilot project fund at that time shall be deposited in the state general fund."

**31-3202. Clerk of district court — Exceptions to fee schedule.** — In any action instituted in the name of any county auditor, as trustee for the county for the foreclosure of any tax lien, no state stenographer's fee must be charged or received by the clerk of the district court. [1917, ch. 36, proviso in § 5, p. 83; reen. C.L., § 2121a; C.S., § 3703; I.C.A., § 30-2702.]

#### JUDICIAL DECISIONS

**Cited in:** St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs, 134 Idaho 486, 5 P.3d 466 (2000).

**31-3203. Sheriff's fees.** — The board of county commissioners of each respective county shall have the power to set sheriff's fees by a resolution of the board for the services herein specified in an amount reasonably related to but not exceeding the actual costs of such service. The sheriff is allowed and may demand and receive such fees. In the event that the board of commissioners does not resolve to set fees by resolution as herein described, the sheriff is allowed and may demand and receive the fees hereinafter specified:

For serving summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant ..... \$10.00

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property ..... \$10.00

For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the court may order: provided, however, that said sum shall be no more than five dollars (\$5.00) per diem or the reasonable costs incurred by a keeper in preserving said property.

For making and issuing a keeper's receipt ..... \$5.00

For taking a bond or undertaking in any case in which he is authorized to take the same ..... \$10.00

For copy of and making return on any writ, process or other paper, when demanded or required by law ..... \$10.00

For serving every notice, rule or order ..... \$10.00

For making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, exclusive of the costs of publication, each notice, per folio ..... \$ 3.00

For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant ..... \$10.00

For holding each inquest, or trial of right of property, to include all services in the matter except mileage ..... \$ 3.00

For serving a subpoena, for each witness summoned ..... \$10.00

For commissions for receiving and paying over money on execution or other process, when land or personal property has been levied on and sold, on the first one thousand dollars (\$1,000), two percent (2%); on all sums above that amount, one percent (1%); but in no case of sale of real estate shall his commission exceed the sum of ..... \$100.00

When the amount of such sale is credited on the debt and no money is transferred, then one-half (½) of such commission.

For commissions for receiving and paying over money on execution without levy, or where lands or goods levied on are not sold, on the first one thousand dollars (\$1,000), one and one-half percent (1 ½%); and one-half (½) of one percent (1%) on all over that sum, but not to exceed in any case ..... \$75.00

The fees herein allowed for the levy of an execution, costs for advertising and percentage for making or collecting the money on execution, must be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a sheriff's deed, including the acknowledgment, to be paid by the grantee before delivery ..... \$10.00

For executing a certificate of sale, exclusive of the filing and recording of same ..... \$ 5.00

For making every arrest in a criminal proceeding ..... \$ 5.00

For summoning each juror ..... \$ 1.00

For serving a subpoena in a criminal action or proceeding, for each witness summoned ..... \$10.00

For traveling to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpoena, venire, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, for each mile actually and necessarily traveled for the first twenty-five (25) miles no charge shall be allowed, and for any miles traveled over twenty-five (25) miles, even if process is not served, the following shall be allowed, in going only ..... \$40

For traveling to execute any warrant of arrest, subpoena, venire or other process in criminal cases, or for taking a prisoner from prison, before a court or magistrate, or for taking a prisoner from the place of arrest to prison, or before a court or magistrate, for each mile actually and necessarily traveled, in going only ..... \$40

For each additional prisoner taken at the same time, per mile ..... \$.25



But if any two (2) or more papers be required to be served in the same action or proceeding, civil or criminal, or be in the possession of the sheriff for service at the same time, and in the same direction, one (1) mileage only shall be charged; and in serving a subpoena, venire, process or paper, when two (2) or more jurors, witnesses, parties or persons to be served reside or are found in the same direction, traveling fees must be charged only for the most distant; and only one (1) mileage per day must be charged for taking a prisoner from prison before a court or magistrate; and constructive mileage must in no case be charged or allowed.

For all services under the election laws, the same mileage and fees as in this chapter provided for similar services.

For copy of and making an interim return on a continuing garnishment to show disbursement of moneys held by the sheriff ..... \$5.00

For postage and processing of each mail renewal class D driver's license authorized pursuant to section 49-319, Idaho Code ..... \$1.00 [1890-1891, p. 174, § 2; reen. 1899, p. 116, § 2; modified by 1899, p. 340, § 5; compiled R.C., § 2122; am. 1911, ch. 197, § 1, p. 660; compiled and reen. C.L., § 2122; C.S., § 3704; am. 1929, ch. 83, § 2, p. 134; I.C.A., § 30-2703; am. 1943, ch. 171, § 1, p. 359; am. 1961, ch. 17, § 1, p. 18; am. 1967, ch. 287, § 1, p. 797; am. 1973, ch. 2, § 5, p. 4; am. 1974, ch. 109, § 1, p. 1252; am. 1982, ch. 173, § 1, p. 456; am. 1983, ch. 58, § 1, p. 134; am. 1992, ch. 68, § 1, p. 202; am. 1995, ch. 76, § 1, p. 205; am. 2003, ch. 39, § 1, p. 158.]

### STATUTORY NOTES

**Cross References.** — Abatement of moral nuisances, § 52-406.

Estrays, care, advertising, and sale of, § 25-2309.

Limitation on mileage, § 31-3217.

Sale of animals for trespass, § 25-2207.

Sheriff's revolving travel fund, § 31-1801 et seq.

**Effective Dates.** — Section 6 of S.L. 1973, ch. 2 declared an emergency. Approved January 26, 1973.

Section 2 of S.L. 1974, ch. 109 provided the act should take effect on and after July 1, 1974.

### JUDICIAL DECISIONS

#### ANALYSIS

Allowance of fees.

Attendance at courts.

Board of prisoners.

Driver's license fees.

Expenses under attachment or foreclosure.

Levy and sale under process.

Mileage.

#### Allowance of Fees.

It is questionable whether there can be any claim for fees where there is no evidence in record that court made order for their allowance. *Cosner v. United Mines Co.*, 33 Idaho 801, 198 P. 472 (1921).

Allowance to two custodians in amount beyond statutory limit will not be allowed to stand. *Cosner v. United Mines Co.*, 33 Idaho 801, 198 P. 472 (1921).

#### Attendance at Courts.

Sheriff is not entitled to compensation for attendance upon district or any other courts. *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894).

#### Board of Prisoners.

Sheriff must file vouchers for expenses incurred by him in boarding county prisoners in

order to have his claim therefor allowed. *Mombert v. Bannock County*, 9 Idaho 470, 75 P. 239 (1904).

Sheriff, and sheriff alone, is entitled to receive compensation from county for board of prisoners; private person who furnished such board can not enforce claim against county for compensation. *Mombert v. Bannock County*, 9 Idaho 470, 75 P. 239 (1904).

#### **Driver's License Fees.**

Under the statutes relating to drivers' licenses, applications for chauffeurs' licenses are not made to the assessor but are made as for instruction or operators' licenses. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Applications for renewals of drivers' licenses may be made either to the sheriff or directly to the department of law enforcement. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Under the statutes relating to drivers' licenses where examinations are to be made, the applications can be made to sheriffs only. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Under the statutes relating to drivers' licenses as amended in 1943, the sheriffs are to cover into the county treasury the amounts collected by them for drivers' licenses monthly, then to be transmitted to the department of law enforcement, also monthly. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Fees collected for drivers' licenses are "state money," even though collected by sheriffs, and are not "fees" within contemplation of constitutional provision relating to pay of county officers. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

The statutes relating to drivers' licenses do not take away from the sheriff and give to another officer any duty which the sheriff is constitutionally entitled to perform. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

#### **Expenses under Attachment or Foreclosure.**

Expenses incurred by sheriff in hauling lumber taken under writ of attachment, from sawmill where it was attached, to a neighboring town, for purpose of sale, is an unneces-

sary expense and not taxable as costs in the case. *McConnell v. McCormick*, 3 Idaho (Hasb.) 227, 28 P. 421 (1891).

Keepers' fees can be allowed only by order of court, and the prevailing party is not entitled to recover keepers' fees that have not been allowed by order of court. *Berry v. G.V.B. Mining Co.*, 5 Idaho 691, 51 P. 746 (1897).

Amount paid for care and feeding of cattle subject of chattel mortgage constitutes debt of mortgagee, taxable as cost in foreclosure action, and where no question was raised, may be deducted by sheriff from proceeds of sale without prior order. *South Side Live Stock Loan Co. v. Iverson*, 45 Idaho 499, 263 P. 481 (1928).

#### **Levy and Sale Under Process.**

Where sheriff collects his commission for sale of land on execution, he can not charge another commission on money subsequently paid for redemption from said sale. *Coeur d'Alene Hdwe. Co. v. Cameron*, 4 Idaho 494, 42 P. 509 (1895).

On account of ambiguity in its provisions, this section is to be construed in connection with prior acts. *Duncan v. Idaho County*, 42 Idaho 164, 245 P. 90 (1926).

It was the intention of legislature that when amount of sale is credited on debt and no money transferred, sheriff is to receive one-half of \$100.00. *Duncan v. Idaho County*, 42 Idaho 164, 245 P. 90 (1926).

Where individual was the alter ego of a corporation which was eventually responsible for rental of barns and feed lots used in connection with the care of livestock between the date of levy thereon by the sheriff and the sale thereof, and the levy was sustained, the individual was not entitled to reimbursement for rental. *Metz v. Hawkins*, 64 Idaho 386, 133 P.2d 721 (1943).

#### **Mileage.**

Sheriff is entitled to mileage for taking prisoner from the place of arrest to prison, or before court or magistrate, regardless of whether prisoner was arrested with or without a warrant. *Warner v. Fremont County*, 4 Idaho 591, 43 P. 327 (1895).

Sheriff is not entitled to double mileage for serving different writs in the same case, at same place and at same time. *Ellis v. Bingham County*, 7 Idaho 86, 60 P. 79 (1900).

### **OPINIONS OF ATTORNEY GENERAL**

It is the responsibility of the sheriff and an expense to his or her county to transport an inmate from the prison back to the county where the inmate's attendance in court is

required; however, in the case of female prisoners, clear statutory language places the responsibility upon the state board of corrections. OAG 83-11.

**31-3204. Probate court fees. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which comprised S.L. 1963, ch. 345, § 1, p. 983, was repealed by S.L. 1969, ch. 139, § 3.

**31-3205. Recorder's fees.** — (1) The county recorder is allowed, and may receive for his services, the following fees, to be paid him by the party procuring his services:

- (a) For recording every instrument, paper or notice, for each page . \$ 3.00
- (b) For copies of any record or paper, for each page ..... \$ 1.00
- (c) For each certificate under seal, when required ..... \$ 1.00
- (d) For release or assignment where more than one (1) document is released or assigned in the same instrument, for each additional release or assignment ..... \$ 1.00
- (e) For recording every town plat or map, for first one hundred (100) lots or less ..... \$11.00
- And for each additional lot ..... \$ .05
- (f) For taking acknowledgments, including seal ..... \$ 1.00
- (g) For recording the location notice or amended location notice, of a mining claim, or for recording and indexing each notice, for each page ..... \$ 3.00
- (h) For recording affidavit of labor of mining claims for one (1) mining claim ..... \$ 4.00
- Plus an additional charge for each claim in excess of one (1) ..... \$ .50
- (i) For filing a survey ..... \$ 5.00
- (j) For making a copy of a survey or highway right-of-way plat . . \$ 4.00
- (k) For issuing marriage license, filing, recording and indexing the certificate of marriage and taking and filing affidavits required in issuance of the license ..... \$11.00
- (l) For administering an oath, including jurat ..... \$ 1.00
- And certifying the same when required an additional sum of .... \$ 1.00
- (m) For comparing and certifying a prepared copy of a file or record in his office, for each page ..... \$ .50
- (n) For making and certifying a report of search for lien upon personal property, excluding Uniform Commercial Code, for each name searched ..... \$ 5.00
- (o) For each certificate under seal there shall be an additional fee of ..... \$ 1.00

(2) For duplication of recorded documents in excess of one hundred (100) pages or continuous copy requests for duplication of records using compact disc, zip disc, floppy disc or other electronic means, the fee shall be negotiated between the county recorder and the purchaser of records. The fee shall not exceed the costs to the county recorder for the retrieval and duplication of the record. These negotiated fees shall be recommended by the county recorder and approved by the board of county commissioners. Any existing agreements for duplication of records are hereby ratified and



approved. Any negotiated fees shall remain in effect until such time as either party requests a review of the fee.

(3) All instruments delivered to the county recorder for record shall be recorded rather than filed with the exception of plats, surveys, cornerstone markers and instruments under the Uniform Commercial Code.

(4) For all other services as recorder, not enumerated herein, the fee fixed in the statute requiring the service or the same fee as allowed the clerk of the district court for like service.

(5) A page shall not exceed fourteen (14) inches in length nor eight and one-half (8 1/2) inches in width. Each page shall be typewritten or be in legible writing. The recording fee to be charged for maps, sketches, drawings or other instruments except plats larger than the size permitted above for a page shall be two cents (2¢) per square inch. [1890-1891, p. 174, § 4; reen. 1899, p. 116, § 4; modified by 1899, p. 405; compiled R.C., § 2124; am. 1911, ch. 173, § 1, p. 567; compiled and reen. C.L., § 2124; C.S., § 3706; I.C.A., § 30-2705; am. 1935, ch. 105, § 1, p. 254; am. 1949, ch. 168, § 1, p. 364; am. 1951, ch. 251, § 1, p. 540; am. 1959, ch. 72, § 1, p. 157; am. 1967, ch. 272, § 6, p. 745; am. 1969, ch. 199, § 1, p. 574; am. 1976, ch. 281, § 3, p. 962; am. 1979, ch. 61, § 1, p. 163; am. 1981, ch. 293, § 1, p. 613; am. 1982, ch. 275, § 1, p. 706; am. 1984, ch. 29, § 1, p. 50; am. 1986, ch. 14, § 1, p. 55; am. 1987, ch. 29, § 1, p. 37; am. 1994, ch. 364, § 1, p. 1139; am. 2006, ch. 286, § 1, p. 882.]

## STATUTORY NOTES

**Cross References.** — Additional marriage license fee, § 39-5213.

Affidavits of performance of mining labor, § 47-606.

Clerk of district court, fees, § 31-3201.

Filing federal revenue tax liens, § 45-202.

Endorsement on instruments recorded, § 55-807.

Location notices, § 47-612.

Marriage licenses, § 32-408.

Notices concerning estrays, § 25-2303.

Recording optometrists' licenses, § 54-1509.

Veterans' exemptions, § 65-301 et seq.

**Amendments.** — The 2006 amendment, by ch. 286, added subsection (2) and designated the remaining subsections accordingly;

and, in subsection (5), added the second sentence.

**Effective Dates.** — Section 32 of S.L. 1967, ch. 272 provides that this act is to become effective at midnight December 31, 1967 and applies to all transactions entered into and events occurring after that date.

Section 33 of S.L. 1967, ch. 272 provides that all transactions and events occurring before midnight December 31, 1967 are to be treated as though this amendment had not occurred.

Section 2 of S.L. 1969, ch. 199 provided that the act should be in full force and effect on and after July 1, 1969.

Section 2 of S.L. 1981, ch. 293 declared an emergency. Approved April 7, 1981.

## JUDICIAL DECISIONS

### ANALYSIS

Action for uncollected fees.

Changing fees.

Cost of delivery.

State not exempt from recording fees.

### Action for Uncollected Fees.

Where county recorder has recorded papers and written instruments and has not collected the full amount of fees prescribed by

the statute therefor, and has thereafter rendered his accounts and settled with board of county commissioners without accounting for the uncollected portion of such fees, county

has such an interest in the unpaid fees as to enable it to prosecute an action directly against party for whom work was done and to recover the same. *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913).

If recorder, in making a reduction of fees in favor of a person, acts under instructions of board of county commissioners, county is estopped to recover the uncharged balance from him and his bondsmen. *Twin Falls County v. West*, 25 Idaho 271, 137 P. 171 (1913).

#### **Changing Fees.**

Fees prescribed by statute to be charged by county recorder are arbitrary charges fixed by act of legislature, and no officer has any right to change the same or depart from the terms thereof as prescribed by legislature. Fact that recorder has a blank book containing printed forms which may reduce cost of recording does not justify him in making any less or different rate than that prescribed by statute. *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913).

Board of county commissioners has no power or authority to change the fee and to direct and require recorder to record such instruments at a less or different rate than

that prescribed by statute. *Twin Falls County v. West*, 25 Idaho 271, 137 P. 171 (1913).

#### **Cost of Delivery.**

This section does not allow a recorder passively to hold a document for "pick up," and although mailing is an economic burden to the recorder, he is entitled to collect \$3.00 per recorded page as a recording fee and this charge covers the cost of delivery. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### **State Not Exempt from Recording Fees.**

There was no legislative intent by the enactment of § 31-3211 to exempt the state or any county as a whole from the payment of fees authorized or prescribed under this section, therefore defendant auditor did not have a mandatory duty to accept for recording without payment of statutory fees instruments such as deeds, releases, mortgages, easements, and other instruments offered for recording by the plaintiff in connection with the acquisition of rights-of-way or other lawful functions. *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).

**Cited in:** *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

**31-3206. Recorder — Exceptions to fee schedule.** — Each county recorder shall record, free of charge, all clear lists of lands granted to the state by the United States. [1911, ch. 63, part of § 1, p. 184; compiled and reen. C.L., § 2124a; C.S., § 3707; am. 1921, ch. 13, § 1, p. 12; I.C.A., § 30-2706.]

### **STATUTORY NOTES**

**Cross References.** — Veterans entitled to performance of certain services without payment of fees, § 65-301 et seq.

### **JUDICIAL DECISIONS**

**Cited in:** *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924); *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).

**31-3207. Auditor's fees.** — For services as county auditor, not enumerated in this chapter, the fee fixed by the statute requiring the service shall be charged and collected, or the same fee as allowed the county recorder as provided by section 31-3205, Idaho Code, shall be charged and collected. [1890-1891, p. 174, § 4; reen. 1899, p. 116, § 4; modified by 1899, p. 405; compiled R.C., § 2124; reen. 1911, ch. 173, § 1, p. 567; compiled and reen. C.L., § 2124b; C.S., § 3708; I.C.A., § 30-2707; am. 1989, ch. 72, § 1, p. 116.]

## JUDICIAL DECISIONS

**Cited in:** Drainage Dist. No. 2 v. Ada County, 38 Idaho 778, 226 P. 290 (1924).

**31-3208. County surveyor's fees. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section which comprised S.L. 1897, p. 19, § 10; reen. 1899, p. 295, § 10; am. R.C., § 2125; compiled and reen. C.L., § 2125; C.S., § 3709; I.C.A., § 30-2708 was repealed by S.L. 1963, ch. 79, § 1, p. 274.

**31-3209. Justice of the peace — Fees. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised S. L. 1963, ch. 217, § 1, p. 626, was repealed by S. L. 1969, ch. 139, § 3.

**31-3210. Constable's fees. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1875, p. 566, § 34; modified by R.S., § 2136; am., compiled and reen. R.C. & C.L., § 2127; C.S., § 3711; I.C.A., § 30-2710; am. 1949, ch. 58, § 1, p. 101; am. 1963, ch. 261, § 1, p. 670, was repealed by S.L. 1989, ch. 72, § 2.

**31-3211. Fees to be prepaid — Exception — Penalty for official dereliction.** — The officers mentioned in this title are not in any case, except for the state or county, to perform any official services unless upon prepayment of the fees prescribed for such services by law, except as in the succeeding sections provided: provided further, that the attorney-general or any prosecuting attorney may cause subpoenas to be issued on behalf of the state, without paying or tendering fees in advance to any officers, and on such payment the officer must perform the services required.

For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond. [R.S., § 2137; modified by R.S., § 2146; am. and reen. R.C. & C.L., § 2128; C.S., § 3712; I.C.A., § 30-2711.]

## JUDICIAL DECISIONS

## ANALYSIS

Action for fees.  
Failure to prepay.  
In general.  
Sheriff.  
State not exempt from recording fees.



**Action for Fees.**

This section entitles officers to demand prepayment of fees as a condition precedent to performance of service, but does not preclude such officers, in case they do not demand prepayment, from afterward maintaining an action to recover fees allowed for such services. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

**Failure to Prepay.**

The failure of certain parties to prepay the appropriate filing fee does not void the action taken by a county official, interfere with the jurisdiction of the district court or the court of appeals, or invalidate the summary judgment. *Massey v. Stillman ex rel. Idaho County Tax Lot No. 59*, 128 Idaho 736, 918 P.2d 605 (Ct. App. 1996).

**In General.**

This section is not amended or repealed by 1891, p. 175, which fixes fees of county officers. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

**Sheriff.**

Sheriff is authorized to collect his fees in advance and he is justified in paying out of proceeds of sale of property, expenses incurred in its preservation. *South Side Live Stock Loan Co. v. Iverson*, 45 Idaho 499, 263 P. 481 (1928).

**State Not Exempt from Recording Fees.**

There was no legislative intent by the enactment of this section to exempt the state or any county as a whole from the payment of fees authorized or prescribed under § 31-3205, therefore defendant auditor did not have a mandatory duty to accept for recording without payment of statutory fees instruments such as deeds, releases, mortgages, easements, etc., offered for recording by the plaintiff in connection with the acquisition of rights-of-way or other lawful functions. *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).

**Cited in:** *Rhea v. Board of County Comm'rs*, 12 Idaho 455, 88 P. 89 (1907); *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

**31-3212. Exceptions to fee schedule — Habeas corpus — State or any county of Idaho a party — Cost of transcripts. —** (1) No filing or recording fee of any kind shall be charged or received by any county officer mentioned in this chapter for duties performed or services rendered in proceedings in habeas corpus, unless the habeas corpus petitioner is a prisoner as defined in section 31-3220A, Idaho Code.

(2) County officers shall not charge any fee against, or receive any compensation whatever from, the state or any county of Idaho for any services rendered in any action or proceeding in which the state of Idaho, or any state board, or state officer in his official capacity, or any county of Idaho, or county officer in his official capacity, is a party.

(3) If the habeas corpus petitioner or appellant is a prisoner, and is not an indigent prisoner as defined in section 31-3220A, Idaho Code, the prisoner may be required to pay all or part of the filing fees on appeal as set forth in sections 31-3201 and 31-3201A, Idaho Code. If the appellant is an indigent prisoner, as found by the court under section 31-3220A, Idaho Code, the transcript on appeal will be paid for as provided in section 1-1105(2), Idaho Code.

(4) In habeas corpus cases on appeal to the supreme court of the state of Idaho, in which the appellant is not a prisoner but is otherwise restrained of his liberty by any public officer, the transcript for use on the appeal will be paid for by the appellant. If the appellant under this paragraph is indigent, the transcript and/or record for use on the appeal will be paid for in the manner as provided in section 1-1105(2), Idaho Code.

(5) In habeas corpus cases on appeal to the supreme court of the state of Idaho, in which the custody of children is in controversy, the appellant, unless he be indigent, shall pay for the record on appeal. If the appellant under this paragraph is indigent, the record and/or transcript will be paid

for as provided in section 1-1105(2), Idaho Code. [R.S., § 2138; am. 1901, p. 162, § 1; reen. R.C. & C.L., § 2129; C.S., § 3713; I.C.A., § 30-2712; am. 1967, ch. 52, § 1, p. 98; am. 1982, ch. 281, § 1, p. 715; am. 1996, ch. 420, § 5, p. 1398.]

## STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1967, ch. 52 declared an emergency. Approved March 1, 1967.

## JUDICIAL DECISIONS

### ANALYSIS

Court reporters.  
Exemption of state from fees.  
Habeas corpus.

### Court Reporters.

In habeas corpus proceedings to determine the custody of a minor child, the petitioner held entitled to a transcript without charge by the court reporter. *Sills v. Sills*, 51 Idaho 299, 6 P.2d 1026 (1931).

### Exemption of State from Fees.

There was no legislative intent by the enactment of this section to exempt the state or any county as a whole from the payment of fees authorized or prescribed under § 31-3205, therefore defendant auditor did not have a mandatory duty to accept for recording without payment of statutory fees instruments such as deeds, releases, mortgages, easements, etc., offered for recording by the plaintiff in connection with the acquisition of rights-of-way or other lawful functions. *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).

In seeking to compel defendant county auditor and recorder to accept for filing and recordation instruments designed for creation of tax liens and to issue writs of execution thereon, without payment of statutory fees, plaintiff state agency properly proceeded by writ of mandate. *Garrett v. Kline*, 87 Idaho 456, 394 P.2d 157 (1964).

Statutory provision that no county officer shall charge any fee against or receive any compensation from the state in any action or proceeding in which the state is a party entitled the executive director of the employment

security agency to file and record instruments creating tax liens under the Employment Security Law, and to issuance of execution thereon, without payment of statutory fees, as the procedure to collect delinquent contributions under that law constituted a "proceeding" within the meaning of this section. *Garrett v. Kline*, 87 Idaho 456, 394 P.2d 157 (1964).

### Habeas Corpus.

While the writ of habeas corpus is a civil and not a criminal remedy despite its consideration in the Code in the title dealing with "Criminal Procedure," the requirement that a nonresident furnish security for costs would be inconsistent not only with the meager legislative enactments on the subject but also with the fundamental purpose of the writ as one of liberty. *Cole v. Cole*, 68 Idaho 561, 201 P.2d 98 (1948).

A consideration of the history and purpose of the writ of habeas corpus leads irresistibly to the conclusion that a proceeding in habeas corpus is not, and was not intended to be, within the coverage of § 12-116 requiring nonresident plaintiffs to give security for costs. *Cole v. Cole*, 68 Idaho 561, 201 P.2d 98 (1948).

**Cited in:** *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898); *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924); *Sivak v. Ada County*, 115 Idaho 762, 769 P.2d 1134 (Ct. App. 1989).

**31-3213. Pensioners exempt from paying fee — Penalty for charging.** — No judge or clerk of court, county clerk, county auditor or any other county officer shall be allowed to charge any honorably discharged male or female veteran who had active service in any war or conflict officially engaged in by the government of the United States or their dependents or legal representative thereof, any fee for administering any

oath or giving any official certificate for the procuring of any pension, bounty or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). [1895, p. 36, §§ 1, 2; reen. 1899, p. 242, §§ 1, 2; reen. R.C. & C.L., § 2129a; C.S., § 3714; I.C.A., § 30-2713; am. 1969, ch. 24, § 1, p. 48.]

### JUDICIAL DECISIONS

**Cited in:** Drainage Dist. No. 2 v. Ada County, 38 Idaho 778, 226 P. 290 (1924).

**31-3214. Table of fees — Officers to publish — Penalty for neglect.** — Every officer whose fees are herein ascertained must publish and set up in his office fair tables of his fees, according to this title, within one (1) month after he enters upon the duties of his office, in some conspicuous place, for inspection of all persons who have business in his office, upon pain of forfeiting for each day a sum not exceeding twenty dollars (\$20.00), which may be recovered by any person by action before any justice of the peace of the same county, with costs. [R.S., § 2139; reen. R.C. & C.L., § 2130; C.S., § 3715; I.C.A., § 30-2714.]

**31-3215. Execution for fees.** — If any clerk, sheriff, justice of the peace, or constable, shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor, in his own name, against the party from whom they are due, to be issued from the court in which the action is pending. [R.S., § 2140; reen. R.C. & C.L., § 2131; C.S., § 3716; I.C.A., § 30-2715; am. 1970, ch. 120, § 13, p. 284.]

### STATUTORY NOTES

**Amendments.** — The 1970 amendment reenacted this section without change.

### JUDICIAL DECISIONS

#### **In General.**

This section was not repealed by 1891, p. 175, which fixed the fees of county officers. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

**Cited in:** *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962).



**31-3216. Folio defined. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 2132; C.S., § 3717; I.C.A., § 30-2716, was comprised R.S., § 2141; reen. R.C. & C.L., repealed by S.L. 1989, ch. 72, § 3.

**31-3217. Limitation on mileage of officer.** — When any sheriff, constable or coroner serves more than one (1) process in the same case, not requiring more than one (1) journey from his office, he shall receive mileage only for the most distant service. [R.S., § 2142; reen. R.C. & C.L., § 2133; C.S., § 3718; I.C.A., § 30-2717.]

**31-3218. Receipt for fees.** — Every officer upon receiving any fees for official duty or services, may be required by the person making the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they respectively accrued, and shall receipt for the same; and if he refuses or neglects to do so, when required, or shall receive illegal fees, he shall be liable to the party paying for three (3) times the amount so paid. [R.S., § 2144; reen. R.C. & C.L., § 2134; C.S., § 3719; I.C.A., § 30-2718.]

**STATUTORY NOTES**

**Cross References.** — Form of receipts prescribed by state auditor, § 67-1004.

**31-3219. Photographic copies of records — Fees.** — The county recorder, and the clerk of the district court, is allowed, and may receive for his services, the following fees, to be paid him by the party procuring his services: \*

For photographic copies of any record the sum of \$1.00 per page. [1957, ch. 166, § 1, p. 300; am. 1959, ch. 66, § 1, p. 138.]

**31-3220. Inability to pay fees — Definitions — Affidavit.** — (1) For purposes of this section, the following definitions shall apply:

- (a) "Action" means any civil suit, action, proceeding or appeal of any such action, including a habeas corpus action, but excluding proceedings brought pursuant to chapter 49, title 19, Idaho Code.
- (b) "Court" means the district court (including its magistrates division), the court of appeals of Idaho or the supreme court of Idaho.
- (c) "Frivolous" means a claim which has no arguable basis in law or fact, or is substantially similar to a previous claim that has been dismissed with prejudice or is barred by res judicata or collateral estoppel.
- (d) "Indigent" means a person who is not a prisoner, as defined in section 31-3220A, Idaho Code, and who is found by the court to be unable to pay fees, costs or give security for the purpose of prepayment of fees, costs or security in a civil action.
- (e) "Malicious" means a claim which appears to be intended solely to harass the party.

(2) The court may authorize the commencement or defense of any action without prepayment of fees, costs or security, by any indigent person not a prisoner, providing:

(a) The person files an affidavit that he is indigent as provided in subsection (3) of this section, and unable to pay fees, costs or give security; and

(b) The court finds, after informal inquiry, that the person is indigent for the purpose of prepayment of fees, costs or security.

(3) The affidavit shall contain complete information as to:

(a) The person's identity;

(b) The nature and amount of his income;

(c) His spouse's income;

(d) The real and personal property owned;

(e) His cash or checking accounts;

(f) His dependents;

(g) His debts;

(h) His monthly expenses;

(i) The nature of the action;

(j) The affiant's belief that he is entitled to redress.

The affidavit shall also contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn as required by law.

(4) No fees, costs or security shall be waived at the commencement of an action if the court finds and certifies in writing that the action is frivolous, malicious or otherwise not taken in good faith.

(5) Upon the filing of an affidavit as set forth in this section and a finding that the person is indigent, the court may direct that the expense of printing the record and/or transcript for use on appeal be paid out of the district court fund of the county in which the action was filed.

(6) The officers of the court shall issue and serve all process, and perform all duties in cases in which the person is found by the court to be indigent. Witnesses shall attend as in other cases, and the same remedies shall be available in other civil cases. Payment of fees for service of process and witnesses, where required, shall be paid out of the district court fund of the county in which the action is filed.

(7) The court may retroactively require payment for any fees, costs or security which may have been waived in the action if the court finds that any allegation contained in the affidavit of inability to pay fees is untrue, or if the court is satisfied that the action is frivolous or malicious.

(8) Judgment may be entered for attorney fees and costs at the conclusion of the action as in other cases. If the cost of the transcript or printed record has been paid out of the district court fund for the prevailing party, that party may be taxed in favor of the district court fund. [I.C., § 31-3220, as added by 1977, ch. 228, § 1, p. 680; am. 1979, ch. 222, § 1, p. 617; am. 1996, ch. 420, § 6, p. 1398.]

## STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1977, ch. 228 declared an emergency. Approved March 31, 1977.

Section 2 of S.L. 1979, ch. 222 declared an emergency. Approved March 30, 1979.

## JUDICIAL DECISIONS

### ANALYSIS

Clerk's fee.  
 Frivolous action.  
 Indigence.  
 Waiver.  
 Waiver of fees and costs.

### Clerk's Fee.

The fee charged to an appellant for preparation of the clerk's record on appeal did not violate Const., Art. 1, § 18, where she did not assert that the fee set by I.A.R. 27(b), \$1.25 for each page of the record, was an unreasonable amount, and she made no showing that she should be relieved from the payment of the fee for the clerk's record on grounds of indigency. *Rodell v. Nelson*, 113 Idaho 945, 750 P.2d 966 (Ct. App. 1988).

### Frivolous Action.

Where district court treated magistrate's finding on prescription medication issue as a "certification" that the entire "action" was frivolous, where the district court then relied upon this purported "certification" without making an independent determination of its own, and where the district court made no determination as to whether the appeal presented material factual issues for which review of a transcript or of a tape would be necessary, the court, in dismissing the appeal, exercised its discretion inconsistently with applicable legal standards. *Sivak v. Ada County*, 115 Idaho 762, 769 P.2d 1134 (Ct. App. 1989).

Indigent petitioner's appeal from the magistrate division was not to be dismissed for failure to provide a transcript unless the district court independently determined—from the issues raised and from so much of the record as was available—that the appeal clearly was frivolous, as the magistrate had certified. *Sivak v. Ada County*, 115 Idaho 762, 769 P.2d 1134 (Ct. App. 1989).

### Indigence.

The trial court did not err in holding that the plaintiffs were not "indigent" so as to qualify for the waiver of costs and fees where the evidence indicated that the plaintiffs had a net after tax monthly income of \$1,334, that

the plaintiffs donated ten percent of their income to a church, and that the plaintiffs made no claims that they could not borrow the funds. *Johnson v. Jones*, 105 Idaho 602, 671 P.2d 1065 (1983).

### Waiver.

In a 42 U.S.C.S. § 1983 suit, a prisoner's state law claims for negligence, assault, and battery were not subject to dismissal based on the prisoner's failure to post a bond because it was unclear whether Idaho law required indigent prisoners to post bonds in order to file suit against state government officials. *Pugsley v. Cole*, — F. Supp. 2d — (D. Idaho June 27, 2005).

### Waiver of Fees and Costs.

In an action in the district court to recover damages for mental anguish and physical suffering allegedly caused by an abusive and threatening telephone call made to the plaintiff by an employee of the Department of Health and Welfare, the allegation of maliciousness should have been explicitly taken into account by the district court in reaching its conclusion regarding the extent to which compliance with the Tort Claims Act was necessary, and, ultimately, therefore, whether the appeal from the dismissal order was frivolous. Because of this flaw in the discretionary decision of the district court, under subsection (2) of this section, refusing to waive appellate fees and costs on the ground the appellate action was frivolous, the Court of Appeals vacated the order and remanded the question as to the waiver of costs and fees to the district court for further consideration and determination. *Madsen v. Idaho Dep't of Health & Welfare*, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988).

**Cited in:** *Bernard v. Roby*, 112 Idaho 583, 733 P.2d 804 (Ct. App. 1987); *Sinclair & Co. v. Gurule*, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988); *Murray v. Spalding*, 141 Idaho 99, 106 P.3d 425 (2005).

**31-3220A. Prisoner payment of fees at time of filing of action — Partial payment of fees — Dismissal of action.** — (1) For the purposes



of this section, the following definitions shall apply:

(a) "Action" means a civil suit, action, proceeding, or appeal of any such action, including habeas corpus, but excluding proceedings brought pursuant to chapter 49, title 19, Idaho Code.

(b) "Inmate account" means an account managed by officials of state, local or private correctional facilities, as defined in section 18-101A, Idaho Code, to which the prisoner has access to purchase personal property from the correctional facility's commissary in addition to property and supplies provided by the county, state or private correctional facility to meet the prisoner's basic needs.

(c) "Prisoner" shall have the meaning provided in section 18-101A, Idaho Code.

(2) A prisoner who seeks to file an action with partial payment of court fees required in sections 31-3201 and 31-3201A, Idaho Code, shall file the following at the time of filing of an action:

(a) A motion to proceed on partial payment of court fees under this section;

(b) An affidavit of inability to pay all court fees at the time of filing the action, containing complete information as to:

(i) The prisoner's identity;

(ii) The nature and amount of the prisoner's income;

(iii) The prisoner's spouse's income;

(iv) The real and personal property owned;

(v) His cash or checking accounts;

(vi) His dependents;

(vii) His debts;

(viii) His monthly expenses;

(ix) The nature of the action;

(x) The affiant's belief that he is entitled to redress;

The affidavit shall also contain the following statements: "I am unable to pay all court costs at the time of filing the action. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn as required by law; and

(c) A certified copy of his inmate account that reflects the activity of his account over his period of incarceration or for twelve (12) months, whichever is less. The copy of the prisoner's inmate account shall be certified by a custodian of inmate accounts of the office of the county sheriff, the department of correction, or the private correctional facility.

Upon filing of the action and motion to proceed under this section, the prisoner shall also serve a copy of each document filed in compliance with this subsection upon counsel for the county sheriff, the department of correction, or the private correctional facility.

(3) Upon review of the information provided and considering the prisoner's ability to pay all court fees at the time of filing the action, the court shall order the prisoner to pay all or part of the court fees as set forth in sections 31-3201 and 31-3201A, Idaho Code.

(4) If the court permits the prisoner's action to proceed on partial payment of court fees, the court shall assess and, when funds exist, collect

a partial payment of any court fees as set forth in sections 31-3201 and 31-3201A, Idaho Code, an initial partial filing fee of twenty percent (20%) of the greater of:

- (a) The average monthly deposits to the prisoner's inmate account; or
- (b) The average monthly balance for the six (6) month period immediately preceding the filing of the action.

(5) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to the prisoner's inmate account until the full amount of all applicable court fees set forth in sections 31-3201 and 31-3201A, Idaho Code, are paid. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount of all applicable court fees set forth in sections 31-3201 and 31-3201A, Idaho Code, are paid.

(6) In no event shall the court fees collected exceed the amount of fees permitted by statute for the commencement of an action.

(7) In no event shall a prisoner be prohibited from bringing an action for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(8) The court may dismiss an action filed under this section, in whole or in part, on its own motion or by motion of a party, upon a finding that:

- (a) The prisoner has failed to pay the court fees under subsection (3) of this section within thirty (30) days of the entry of the order for court fees, or any time thereafter; or
- (b) Any allegation in the prisoner's affidavit filed under this section is false.

(9) If the action or any part of it is dismissed without prejudice under subsection (8) of this section, and the prisoner refiles the action, the following shall apply:

- (a) The requirements under this section must be met again in their entirety; and
- (b) No amount paid for court fees in any previously filed action, or any part thereof, shall be credited to the court fees required under sections 31-3201 and 31-3201A, Idaho Code.

(10) The court may refuse further filings under this section until the order for court fees has been satisfied in any previous action filed under this section.

(11) The office of the attorney general, the county prosecutor, or other counsel for the defendant or respondent, is authorized to receive information from the county sheriff, department of correction, or private correctional facility in order to verify the financial information submitted by a prisoner pursuant to this section.

(12) The court may request an official or officials of the county jail, department of correction, or private correctional facility to file an affidavit concerning the allegations in the prisoner's affidavit or concerning the merits of the action prior to determination whether to proceed under this section.

(13) The court may require the prisoner to file an affidavit that the claim has not been previously brought against the same parties or from the same operative facts in any state or federal court.

(14) The court may dismiss an action or a portion of the action under this section, before or after service, on its own motion or by motion of a party, upon a finding that:

- (a) Any allegation in the affidavit or the action is false;
- (b) The action is frivolous;
- (c) The action is malicious; or
- (d) The action fails to state a claim upon which relief can be granted.

(15) If a portion of the action is dismissed, the court's order dismissing the action shall also designate the issues and the defendant or respondent upon which the action is to proceed.

(16) The court shall award reasonable costs and attorney's fees to the defendant or respondent if the court finds that:

- (a) Any allegation in the prisoner's affidavit is false;
- (b) The action or any part of the action is frivolous or malicious; or
- (c) The action or any part of the action is dismissed for failure to state a claim upon which relief can be granted.

(17) Orders entered under this section are not subject to interlocutory appeal.

(18) Nothing in this section shall prevent a prisoner from authorizing payment beyond that required under the order for filing fees.

(19) If the court authorizes the commencement of the action or any part of the action without payment of fees upon a finding that the prisoner is unable to pay all court fees at the time of filing the action, and the court later finds that a prisoner is then able to pay all court fees, the court shall order the prisoner to pay all unpaid court fees within two (2) business days and enter an order for court fees. The court's finding under this subsection may be based on information contained in affidavits or other information available to the court. The court shall dismiss the action if the prisoner fails to comply with an order entered under this subsection.

(20) If the action or any part of it is dismissed without prejudice under subsection (19) of this section, and the prisoner refiles the action, the following shall apply:

- (a) The requirements under this section must be met again in their entirety; and
- (b) No amount paid for court fees in any previously filed action, or any part thereof, shall be credited to the court fees required under sections 31-3201 and 31-3201A, Idaho Code.

(21) The court may develop a form questionnaire which it may require by local rule to be filed to implement this statute.

(22) In no way shall this section be interpreted to create a liberty interest for prisoners entitling them to due process protection under the Idaho constitution or the United States constitution. [I.C., § 31-3220A, as added by 1996, ch. 420, § 7, p. 1398; am. 2000, ch. 272, § 13, p. 786; am. 2002, ch. 296, § 1, p. 849.]



## STATUTORY NOTES

**Effective Dates.** — Section 14 of S.L. 2000, ch. 272 declared an emergency. Approved April 12, 2000.

## JUDICIAL DECISIONS

### ANALYSIS

Constitutionality.  
Dismissal improper.  
Effect of noncompliance.  
Legislative intent.  
Partial payments.  
Waiver.

### Constitutionality.

This section, requiring inmates to pay partial filing fees to initiate a civil action, does not violate an inmate's rights to access the courts and to equal protection. *Madison v. Craven*, 141 Idaho 45, 105 P.3d 705 (Ct. App. 2005).

### Dismissal Improper.

Where the court did not make any finding on a prisoner's indigency in relation to the non-payment of filing fees, did not consider the alternative of allowing him to proceed on payment of only part of the applicable fees, did not issue an order specifying the amount of fees that the prisoner would be required to pay, and did not allow him thirty days within which to pay, the dismissal of his appeal could not be sustained. *Bureau of Child Support Servs. v. Garcia*, 132 Idaho 505, 975 P.2d 793 (Ct. App. 1999).

### Effect of Noncompliance.

This statute does not authorize summary dismissal of a prisoner's appeal or other action immediately upon a determination that he neither paid the requisite court fees nor strictly complied with the statutory procedures to obtain leave to proceed without payment, but requires that the prisoner be given notice and an opportunity to make payment before the proceeding may be dismissed. *Bu-*

*reau of Child Support Servs. v. Garcia*, 132 Idaho 505, 975 P.2d 793 (Ct. App. 1999).

### Legislative Intent.

The intent of the legislature in enacting this section was to create a disincentive for the filing of frivolous claims by inmates and to assure the financial accountability of prisoners. *Madison v. Craven*, 141 Idaho 45, 105 P.3d 705 (Ct. App. 2005).

### Partial Payments.

Although it was proper for the district court to assess a partial filing fee upon the filing of a prisoner civil rights complaint, it was error to dismiss the action when the prisoner offered evidence in a later motion that he did not have sufficient funds in his account to even cover the partial payment. *Madison v. Craven*, 141 Idaho 45, 105 P.3d 705 (Ct. App. 2005).

### Waiver.

The United States Supreme Court has recognized only two fundamental interests that require state courts to completely waive filing fees for indigent persons—those challenging termination of their parental rights or those seeking a divorce. *Madison v. Craven*, 141 Idaho 45, 105 P.3d 705 (Ct. App. 2005).

**Cited in:** *Murray v. Spalding*, 141 Idaho 99, 106 P.3d 425 (2005).

## RESEARCH REFERENCES

**A.L.R.** — Attorney's fees awards under § 803(d) of Prison Litigation Reform Act (42 U.S.C. § 1997e(d)). 165 A.L.R. Fed. 551.

### 31-3221. Payments to court by credit card or debit card. —

(1) The clerk of the district court may accept payment of a debt owed to the court by a credit card or debit card. Any person making payment on a debt owed to the court by a credit card or debit card shall be assessed an electronic payment convenience fee established by the supreme court, which shall include, among other costs, the amount charged the court by the issuer

for the use of the card. This fee may also be paid by credit card or debit card and included in the transaction for the payment of the debt owed to the court. The electronic payment convenience fee shall be separate from the debt owed to the court and shall be deposited into the ISTARS technology fund created in section 1-1623, Idaho Code, and shall be used for the implementation of the provisions of this section. The debt owed to the court shall not be expunged, canceled, released, discharged or satisfied and any receipt or other evidence of payment shall be deemed conditional until the court has received final and unconditional payment of the full amount due from the financing agency or card issuer for the transaction. If an electronic payment once made is subsequently denied, revoked or otherwise canceled for any reason, and the payment is withdrawn from the court, the court may proceed as though payment had never been made.

(2) Definitions. As used in this section:

(a) "Cardholder" means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.

(b) "Credit card" means any instrument or device, whether known as a credit card or credit plate or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.

(c) "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(d) "Debt owed to the court" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, cash deposit of bail, moneys expended in providing counsel and other defense services to indigent defendants, or other charges which a court judgment has ordered to be paid to the court or which a party has agreed to pay in criminal or civil cases and includes any interest or penalty on such unpaid amounts as provided for in the judgment or by law.

(e) "Issuer" means a business organization, financial institution or authorized agent of a business organization or financial institution that issues a credit card or debit card.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section and may enter into contracts with an issuer or other organization to implement the provisions of this section. [I.C., § 31-3221, as added by 2003, ch. 287, § 1, p. 777; am. 2006, ch. 73, § 2, p. 226.]

#### STATUTORY NOTES

**Amendments.** — The 2006 amendment, by ch. 73, substituted "ISTARS technology fund created in section 1-1623, Idaho Code, and shall be used for the implementation of the provisions of this section" for "district court fund" in subsection (1).

## CHAPTER 33

## OTHER COUNTY CHARGES

## SECTION.

31-3301. Accounts must be presented to commissioners.

31-3302. County charges enumerated.

**31-3301. Accounts must be presented to commissioners.** — Accounts for county charges of every description must be presented to the board of county commissioners to be audited as provided by law. [R.S., § 2160; reen. R.C. & C.L., § 2135; C.S., § 3720; I.C.A., § 30-2801.]

## STATUTORY NOTES

**Cross References.** — County finances and claims against county, § 31-1501 et seq.

## JUDICIAL DECISIONS

**Audit of Claims.**

Board of commissioners have authority to audit a claim for publication of delinquent tax list, although the contract for such publication is made by assessor. *Jolly v. Woodworth*, 4 Idaho 496, 42 P. 512 (1895).

**Cited in:** *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923); *Guiles v. Kellar*, 68 Idaho 400, 195 P.2d 367 (1948).

**31-3302. County charges enumerated.** — The following are county charges:

(1) Charges incurred against the county by virtue of any provision of this title.

(2) The compensation allowed by law to constables and sheriffs for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by or at the request of the prosecuting attorneys, and for other services in relation to criminal proceedings.

(3) The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail. Provided that any medical expenses shall be paid at the unadjusted medicaid rate of reimbursement as provided in section 31-3502(4), Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement.

(4) The compensation allowed by law to county officers in criminal proceedings, when not otherwise collectible.

(5) The sum required by law to be paid to grand jurors and indigent witnesses in criminal cases.

(6) The accounts of the coroner of the county, for such services as are not provided to be paid otherwise.

(7) The necessary expenses incurred in the support of county hospitals, and the indigent sick and nonmedical assistance for indigents, whose support is chargeable to the county.



(8) The contingent expenses, necessarily incurred for the use and benefit of the county.

(9) Every other sum directed by law to be raised for any county purpose, under the direction of the board of county commissioners, or declared to be a county charge. [R.S., § 2161; am. 1899, p. 116, § 7; am. and reen. R.C. & C.L., § 2136; C.S., § 3721; I.C.A., § 30-2802; am. 1936 (3rd E.S.), ch. 2, § 1, p. 6; am. 1939, ch. 182, § 17, p. 338; am. 1970, ch. 120, § 14, p. 284; am. 1992, ch. 83, § 1, p. 256; am. 1994, ch. 362, § 3, p. 1135.]

### STATUTORY NOTES

**Compiler's Notes.** — The reference in subsection (3) to section 31-3502(4) should be to section 31-3502(5), following the amendment of § 31-3502 by S.L. 1996, ch. 410, § 3.

The enacting clause of § 17, of S.L. 1939, ch. 182, read: "That section 30-2802, Idaho Code Annotated as amended by Chapter 2 of

the Session Laws of 1935, as passed by the third extra session \* \* \*." The figures "1935" should have read "1936."

**Effective Dates.** — Section 15 of S.L. 1970, ch. 120 provided that the act should become effective at 12:01 a.m. on January 11, 1971.

### JUDICIAL DECISIONS

#### ANALYSIS

Arrests.

Coroner's inquest.

Custodial charges.

Freight charges.

Publishing delinquent tax list.

Pursuing fugitive from justice.

Report of officers.

Salaries.

Service of subpoena in another county.

#### Arrests.

Expense incurred in arresting a person is a public charge. *Lansdon v. Washington County*, 16 Idaho 618, 102 P. 344 (1909).

#### Coroner's Inquest.

Claim of physician for services in attending coroner's inquest, when subpoenaed by coroner under § 19-4303, and pronouncing a professional opinion on cause of death, is a charge against county to extent of the reasonable value of physician's services. *Fairchild v. Ada County*, 6 Idaho 340, 55 P. 654 (1898).

#### Custodial Charges.

When a person is in the sheriff's custody, whether indigent or not, the sheriff and custodial county are responsible for payment of medical expenses incurred. *St. Alphonsus Regional Medical Ctr., Ltd. v. Killeen*, 124 Idaho 197, 858 P.2d 736 (1993).

#### Freight Charges.

Services performed by a common carrier in hauling sand and gravel for a county are county charges. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

#### Publishing Delinquent Tax List.

Charge for publishing delinquent tax list is a county charge. *Jolly v. Woodworth*, 4 Idaho 496, 42 P. 512 (1895).

#### Pursuing Fugitive from Justice.

Claim of executive agent for expenses incurred in going to another state under the requisition of governor to bring back fugitive from justice is not a county charge, but is a state charge under R.S., § 8425 (§ 19-4528). *Kroutinger v. Board of Exmrs.*, 8 Idaho 463, 69 P. 279 (1902).

#### Report of Officers.

Officer's report should contain detailed statement of all fees and commissions earned by him and the verification should be so worded as to verify that fact; but if the report is insufficient, commissioners should notify officer and permit him to supply the defect, and should not summarily disallow claims based thereon. *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894).

#### Salaries.

All compensation due county auditor, not chargeable to or received from other sources,

is to be paid to him by the county. *Cunningham v. Moody*, 3 Idaho 125, 28 P. 395 (1891).

The board shall pass upon and allow, or disallow, claims for salaries of county officers. *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915).

#### **Service of Subpoena in Another County.**

Claim of sheriff against county for serving

subpoenas in some other county is an unnecessary expense, as subpoenas should be sent to sheriff of county where witness may be, and any allowance of such claim is wrongful and in violation of law. *Clyne v. Bingham County*, 7 Idaho 75, 60 P. 76 (1900).

### **OPINIONS OF ATTORNEY GENERAL**

Counties are responsible for the cost incurred by the county jail in housing a prisoner who has been charged with a state law violation committed within city limits and investigated by city police officers, and while coun-

ties may bring legal action to recoup jail costs incurred for city prisoners charged under city ordinances or state motor vehicle laws, sheriffs cannot refuse to accept city prisoners. OAG 84-4.

## **CHAPTER 34**

### **NONMEDICAL INDIGENT ASSISTANCE**

#### **SECTION.**

- 31-3401. Powers and duties of the board of county commissioners.
- 31-3402. Contract for maintenance of indigent.
- 31-3403. Definitions.
- 31-3404. Application for nonmedical indigent assistance.
- 31-3405. Eligibility classifications — Duration of assistance for purposes of eligibility.
- 31-3406. Investigation of application.
- 31-3407. Obligated county.
- 31-3408. Eligibility.
- 31-3409. Application of state and federal pro-

#### **SECTION.**

- gram — Interim relief subrogation of county to receipt of federal payments.
- 31-3410. Decision of county.
- 31-3411. Notice of appeal.
- 31-3412. Indigent burial.
- 31-3413. Approved claims.
- 31-3414. Repayment by recipient.
- 31-3415. Divestiture.
- 31-3416. Violations and penalty.
- 31-3417. Separability.
- 31-3418. Confidentiality — Proceedings and records of indigents.

**31-3401. Powers and duties of the board of county commissioners.** — The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law, evaluate the need and provide to indigent person(s) nonmedical assistance in a temporary situation only when no alternatives exist. Nothing in this chapter shall imply county assistance is to be provided on a continuing basis. Boards of county commissioners, by resolution, shall promulgate policies and procedures, may negotiate payment to providers, and may contract for nonmedical services, pursuant to this chapter. For the purpose of funding nonmedical services for indigent persons, boards of county commissioners are authorized to levy an ad valorem tax pursuant to section 31-3503, Idaho Code. [I.C., § 31-3401, as added by 1992, ch. 83, § 3, p. 256.]

### **STATUTORY NOTES**

**Cross References.** — County councils of public assistance, § 56-301 et seq.

Hospitals for indigent sick, § 31-3501 et seq.

Parent or child able to support poor person, duty of county commissioners, § 32-1002.

Shelter care hearing for child, § 16-1615.

**Prior Laws.** — The following former sections were repealed by S.L. 1992, ch. 83, § 2, effective July 1, 1992:

31-3401. (1864, p. 424, § 3; R.S., § 2170; reen. R.C. & C.L., § 2137; C.S., § 3722; I.C.A., § 30-2901; am. 1974, ch. 302, § 1, p. 1769).

31-3402. (1883, p. 78, §§ 3, 4, 5; R.S., § 2171; reen. R.C. & C.L., § 2138; C.S., § 3723; I.C.A., § 30-2902; am. 1949, ch. 20, § 1, p. 25; am. 1974, ch. 302, § 2, p. 1769; am. 1976, ch. 121, § 1, p. 462).

31-3403. (1883, p. 78, § 6; R.S., § 2172; reen. R.C. & C.L., § 2139; C.S., § 3724; I.C.A., § 30-2903; am. 1974, ch. 302, § 3, p. 1769).

31-3404. (1885, p. 127, § 1; am. R.S., § 2173; reen. R.C. & C.L., § 2140; C.S., § 3725; I.C.A., § 30-2904; am. 1935, ch. 15, § 1, p. 34; am. 1967, ch. 27, § 1, p. 47; am. 1974, ch. 302, § 4, p. 1769; am. 1976, ch. 121, § 2, p. 462; am. 1988, ch. 332, § 4, p. 994; am. 1991, ch. 233, § 3, p. 553).

31-3405. (1885, p. 127, § 2; am. R.S., § 2174; reen. R.C. & C.L., § 2141; C.S., § 3726; I.C.A., § 30-2905; am. 1967, ch. 27, § 2, p. 47; am. 1969, ch. 40, § 1, p. 99; am. 1974, ch. 302, § 5, p. 1769; am. 1976, ch. 121,

§ 3, p. 462; am. 1988, ch. 332, § 5, p. 994; am. 1991, ch. 233, § 4, p. 553).

31-3406. (1885, p. 127, § 3; am. R.S., § 2175; reen. R.C. & C.L., § 2142; C.S., § 3727; I.C.A., § 30-2906; am. 1974, ch. 302, § 6, p. 1769; am. 1976, ch. 121, § 4, p. 462; am. 1988, ch. 332, § 6, p. 994; am. 1991, ch. 233, § 5, p. 553).

31-3407. (1885, p. 127, § 4; R.S., § 2176; R.C., § 2143; am. 1911, ch. 155, § 1, p. 475; reen. C.L., § 2143; C.S., § 3728; I.C.A., § 30-2907; am. 1957, ch. 168, § 1, p. 303; am. 1974, ch. 302, § 7, p. 1769; am. 1976, ch. 121, § 5, p. 462; am. 1988, ch. 332, § 7, p. 994; am. 1991, ch. 233, § 6, p. 553).

31-3408. (1885, p. 127, § 6; R.S., § 2177; reen. R.C. & C.L., § 2144; C.S., § 3729; I.C.A., § 30-2908; am. 1974, ch. 302, § 8, p. 1769).

31-3409. (1883, p. 78, § 9; R.S., § 2178; reen. R.C. & C.L., § 2145; C.S., § 3730; I.C.A., § 30-2909; am. 1974, ch. 302, § 9, p. 1769).

31-3410. (1883, p. 78, § 10; R.S., § 2179; reen. R.C. & C.L., § 2146; C.S., § 3731; I.C.A., § 30-2910; am. 1974, ch. 302, § 10, p. 1769).

31-3411. (1913, ch. 20, § 1, p. 90; reen. C.L., § 2146a; am. 1919, ch. 7, § 1, p. 43; C.S., § 3732; I.C.A., § 30-2911; am. 1946 (1st E.S.), ch. 11, § 1, p. 12; am. 1969, ch. 27, § 1, p. 50.)

## JUDICIAL DECISIONS

### Hospitals.

When the definition of hospital is analyzed contextually in the statutes, it is clear that the meaning is not confined to those medical institutions within the state. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 101 Idaho 245, 611 P.2d 1030 (1980).

**Cited in:** Board of County Comm'rs v. McFall, 4 Idaho 71, 35 P. 691 (1894); *University of Utah Hosp. ex rel. Harris v. Pence*, 104 Idaho 172, 657 P.2d 469 (1982); *Cartwright v. Gem County*, 108 Idaho 160, 697 P.2d 1174 (1985); *Shobe v. Ada County*, 130 Idaho 580, 944 P.2d 715 (1997).

**31-3402. Contract for maintenance of indigent.** — The boards of county commissioners in their respective counties, may contract for the care, protection and maintenance of the nonmedically indigent of the county. They shall require the contractor to enter into a bond to the county with two (2) or more approved sureties, in such sum as the boards may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the board no less than quarterly all persons committed to his charge, showing the expense attendant upon their care and maintenance. [I.C., § 31-3402, as added by 1992, ch. 83, § 3, p. 256.]

## STATUTORY NOTES

**Prior Laws.** — Former § 31-3402 was repealed. See Prior Laws, § 31-3401.



**31-3403. Definitions.** — As used in this chapter:

(1) “Adult household member” means any individual eighteen (18) years of age and over who resides in the household.

(2) “Anticipated future income” means a reasonable expectation of income to the household based on an analysis of past income, future income, current income, experience, skills, education, inheritance and possible assets from any source.

(3) “Applicant” means the individual and all others in the household who are requesting nonmedical assistance, and who submits a county application.

(4) “Assets” means property rights including, but not limited to, personal, real, tangible and intangible property.

(5) “Authorized representative” means the applicant’s guardian or appointed attorney-in-fact.

(6) “Board” means a board of county commissioners.

(7) “Clerk” means the clerk of a board of county commissioners or his designee.

(8) “Emergency” means any circumstance demanding immediate action.

(9) “Household” means a collective body of persons consisting of spouses or parents and their children who reside in the same residence; or all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(10) “Indigent” means any applicant who does not have resources available from whatever source which shall be sufficient to enable the applicant to provide nonmedical assistance or a portion thereof.

(11) “Information release” means the document authorizing release of confidential information.

(12) “Investigation” means a detailed examination of the application and information required from the applicant and others to verify eligibility.

(13) “Nonmedical assistance” means reasonable costs for assistance which includes food and shelter and other such necessary services determined by the board by resolution.

(14) “Obligated county for payment” means the county wherein residency has been established.

(15) “Recipient” means the individual(s) determined eligible for county assistance.

(16) “Repayment” means the authority of the board of county commissioners to require indigent person(s) to repay the county for assistance when investigation of their application determines their ability to do so.

(17) “Resident” means a person with a home, house, place of abode, place of habitation, dwelling or place where one actually lived for a consecutive period of thirty (30) days or more prior to the date of application.

(18) “Resource” means assets, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, gifts, bequests, grants, all forms of public or private assistance, crime victim’s compensation, worker’s compensation, veteran’s benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. For

purposes of determining approval for nonmedical indigency only, resources shall not include the value of the homestead of the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution. [I.C., § 31-3403, as added by 1992, ch. 83, § 3, p. 256; am. 1998, ch. 204, § 1, p. 723.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3403 was repealed. See Prior Laws, § 31-3401.

**31-3404. Application for nonmedical indigent assistance. —**

(1) Any person or their authorized representative desiring nonmedical assistance from any county in this state shall, before such aid can be given, make a written application to the clerk of the board of county commissioners or his designee where such applicant resides. An application shall be provided to any individual requesting assistance.

(2) An application for nonmedical assistance shall be on a form provided by the county to which application is being made. This application and information release shall be completed and signed by the applicant, or his authorized representative, setting forth and describing all household resources and sworn to before a county officer authorized by the laws of this state to administer oaths, and filed with the clerk of the board. Failure to comply shall result in denial.

(3) Except as provided in section 31-3410, Idaho Code, within ten (10) working days of the date of application, an interview shall be required with the clerk of the board or his designee. Evidence of need, indigency and residence shall be supplied by the applicant or authorized representative. If the applicant or authorized representative fails to make an appointment, appear at an interview or fails to supply such documentation, the application shall be denied. Any adult household member may be required to appear for an interview, sign a general information release and complete an application. Failure to comply shall result in denial of the requested assistance.

(4) Applicants and all household members who are not fully employed and are capable of employment, shall be required to file an application with the department of employment, use their best efforts to seek employment, and to provide verification of such efforts to the county. The applicant and all other household members may be required to submit a medical statement certifying any inability to work. Individuals voluntarily removing themselves from the work force may be denied assistance. [I.C., § 31-3404, as added by 1992, ch. 83, § 3, p. 256.]

#### STATUTORY NOTES

**Cross References.** — County councils of public assistance to make periodic reviews of cases approved for public assistance, § 56-303.

**Prior Laws.** — Former § 31-3404 was repealed. See Prior Laws, § 31-3401.

## JUDICIAL DECISIONS

## ANALYSIS

Benefits erroneously denied.  
 Certificate of need.  
 Determination of medical indigency.  
 Recovery for aid furnished.

**Benefits Erroneously Denied.**

County board of commissioners erroneously denied medical indigency benefits to a migrant farm worker for a second biopsy, even though there was a month delay between first and second biopsy. Such a delay did not indicate an absence of a medical emergency; the evidence clearly demonstrated that the worker took steps to diagnose her condition in a prompt manner rather than delaying treatment and risking her life by postponing the second biopsy until it was economically feasible for her family to return to their home in Texas. There existed, at the time of her treatment, an imperative need to confirm whether she would require immediate emergency care. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

**Certificate of Need.**

County commissioners may not consider payment of a claim for medical services rendered to an indigent by a hospital until a certificate of need is obtained. *University of Utah Medical Center v. Bonneville County*, 96 Idaho 432, 529 P.2d 1304 (1974).

**Determination of Medical Indigency.**

The district court, and the county clerk as well, in making a determination of medical

indigency are required to apply the legislative definition of that term. *University of Utah Hosp. & Medical Ctr. v. Eriksen*, 100 Idaho 18, 592 P.2d 430 (1979).

**Recovery for Aid Furnished.**

Mother, who was not party to any proceeding had before any officer in connection with son's application for aid, is not bound by determination of any officer that he was indigent. *Bannock County v. Coffin*, 46 Idaho 531, 269 P. 90 (1928).

In action by county to recover amount expended in care of defendant's son, complaint alleging that son "duly and regularly applied" for aid, and that county "duly and regularly rendered aid," did not sufficiently allege fact of son's indigence. *Bannock County v. Coffin*, 46 Idaho 531, 269 P. 90 (1928).

**Cited in:** *Wilcox v. Idaho Falls Latter Day Saints Hosp.*, 59 Idaho 350, 82 P.2d 849 (1938); *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982); *Shobe v. Ada County*, 130 Idaho 580, 944 P.2d 715 (1997).

## \* RESEARCH REFERENCES

**A.L.R.** — Income tax refund as income or resource to be considered in determining eligibility for benefits under aid to families with dependent children program, 3 A.L.R.4th 1074.

Eligibility for welfare benefits as affected

by claimant's status as trust beneficiary, 21 A.L.R.4th 729.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments, 22 A.L.R.4th 534.

**31-3405. Eligibility classifications — Duration of assistance for purposes of eligibility.** — The county is not obligated to provide nonmedical assistance for more than one (1) month in the aggregate in any twelve (12) month period to persons who are eligible for assistance. Assistance provided in any Idaho county shall apply toward the one (1) month benefit period. The board may determine the length of additional eligibility, consistent with the county resolution, for nonmedical services, based upon documentation submitted to them as requested. [I.C., § 31-3405, as added by 1992, ch. 83, § 3, p. 256; am. 1998, ch. 204, § 2, p. 723.]



### STATUTORY NOTES

**Prior Laws.** — Former § 31-3405 was repealed. See Prior Laws, § 31-3401.

### JUDICIAL DECISIONS

#### Standard of Investigation.

The standard the county clerk is to apply in determining medical indigency is precisely the same as that which the district court is to use in reviewing that determination on appeal. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 98 Idaho 876, 574 P.2d 1354 (1978).

**Cited in:** *Bannock County v. Coffin*, 46 Idaho 531, 269 P. 90 (1928); *University of Utah Medical Center v. Bonneville County*, 96 Idaho 432, 529 P.2d 1304 (1974); *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

### RESEARCH REFERENCES

**A.L.R.** — Criminal liability under state laws in connection with application for, or receipt of, public welfare payments. 22 A.L.R.4th 534.

**31-3406. Investigation of application.** — It is the duty of the clerk of the board of county commissioners or his designee, to whom such application is made, to investigate, or cause to be investigated, the grounds of such application, and require the person and other such persons as may be deemed necessary, to testify under oath, and shall file a statement of findings with the board of the county. At the discretion and by resolution of the board, the clerk or his designee to whom such application is made may authorize the expenditure of sums as may be necessary to provide the immediate necessities of such person, not exceeding an aggregate sum as determined by the board which amount may exceed two hundred dollars (\$200) per applicant. [I.C., § 31-3406, as added by 1992, ch. 83, § 3, p. 256.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3406 was repealed. See Prior Laws, § 31-3401.

### JUDICIAL DECISIONS

#### Qualifications.

In order to qualify for county aid under this section, a person claiming medical indigency must meet the definition found at § 31-3502(1). *Braun v. Ada County*, 102 Idaho 901, 643 P.2d 1071 (1982).

**Cited in:** *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

### RESEARCH REFERENCES

**A.L.R.** — Right to maintain action under Hill-Burton Act (42 U.S.C. §§ 291 et seq.) to compel hospital to provide services to persons unable to pay therefor, 11 A.L.R. Fed. 683.

**31-3407. Obligated county.** — The county obligated for payment of nonmedical assistance for eligible applicants shall be the county in which said applicant currently maintains a residence at the time of application. [I.C., § 31-3407, as added by 1992, ch. 83, § 3, p. 256.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3407 was repealed. See Prior Laws, § 31-3401.

### JUDICIAL DECISIONS

**Prejudgment Interest.**

A hospital was not entitled to prejudgment interest from the date a county received the application for medical indigency assistance up to the date judgment was entered despite

the county's erroneous determination on patient's indigency. *University of Utah Hosp. & Medical Ctr. v. Twin Falls County*, 122 Idaho 1010, 842 P.2d 689 (1992).

### RESEARCH REFERENCES

**A.L.R.** — Right to maintain action under Hill-Burton Act (42 U.S.C. §§ 291 et seq.) to

compel hospital to provide services to persons unable to pay therefor, 11 A.L.R. Fed. 683.

**31-3408. Eligibility.** — Pursuant to this chapter, eligibility for nonmedical assistance shall be based on the documentation of county residence, completion of an application and interview, except as provided in section 31-3410, Idaho Code. Failure to comply shall result in a denial of the requested assistance. Notwithstanding any other eligibility factors, no county shall be obligated to provide nonmedical services to persons who have become ineligible for cash assistance by exhaustion of lifetime limits for such benefits or by noncompliance with their personal responsibility contract as defined by rules of the department of health and welfare. [I.C., § 31-3408, as added by 1992, ch. 83, § 3, p. 256; am. 1996, ch. 234, § 1, p. 762.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3408 was repealed. See Prior Laws, § 31-3401.

### JUDICIAL DECISIONS

**Proper Party to Appeal.**

Applicant for medical assistance and the pursuing party must have an identity of interest; such an interest existed where the application concerned only the bill from a health care corporation although there were substantial other medical bills outstanding, and the application was made at the instance of the corporation on a form provided by them with their assistance; therefore, the corporation had the right to pursue the application to

the extent allowed by statute, and thus, the company could be considered an "applicant" and was a proper party to bring appeal of board's denial of application. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

**Cited in:** *University of Utah Medical Center v. Bonneville County*, 96 Idaho 432, 529 P.2d 1304 (1974).

**31-3409. Application of state and federal program — Interim relief subrogation of county to receipt of federal payments.** — (1) An eligible applicant may be provided nonmedical interim assistance that is consistent with the resolution adopted by the board and to the extent such relief is not duplicative of resources or benefits reasonably available to the recipient.

(2) If federal, state or other programs or assistance are available to meet the needs of a household, an eligible applicant must apply for those programs before nonmedical assistance may be provided. If denied such other assistance, the applicant must pursue available administrative appeals for those programs to the final administrative level. [I.C., § 31-3409, as added by 1992, ch. 83, § 3, p. 256; am. 1998, ch. 204, § 3, p. 723.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3409 was repealed. See Prior Laws, § 31-3401.

**31-3410. Decision of county.** — The board shall give written notice of its decision within fifteen (15) working days following completion of the interview. In an emergency circumstance, the clerk or his designee shall make an immediate decision regarding nonmedical assistance. The decision of the board is final if a timely notice of appeal is not filed. [I.C., § 31-3410, as added by 1992, ch. 83, § 3, p. 256.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3410 was repealed. See Prior Laws, § 31-3401.

**31-3411. Notice of appeal.** — The applicant has the right to appeal the decision of the board. Such appeal shall be filed with the clerk of the board, in writing, within thirty (30) days of the date of the board's denial. If the appeal is denied by the board, the applicant shall be entitled to judicial review of the appeal decision of the board, by filing a complaint with the district court within thirty (30) days of the date of the final written decision of the board. Proceedings under this chapter shall be conducted in substantially the same manner provided in the administrative procedures act, chapter 52, title 67, Idaho Code. [I.C., § 31-3411, as added by 1992, ch. 83, § 3, p. 256.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3411 was repealed. See Prior Laws, § 31-3401.

**31-3412. Indigent burial.** — It shall be the duty of the board to provide for burial or cremation of any deceased indigent person. The amount paid by the obligated county shall not in any case exceed the established or negotiated rate set by each board. If the coroner, mortician or other responsible parties are unable to establish next of kin or other resources, they may make application to the board. Application must be made prior to services rendered and pursuant to terms of negotiated agreement. The county shall be free from any liability for said burial or cremation. [I.C., § 31-3412, as added by 1992, ch. 83, § 3, p. 256.]



**31-3413. Approved claims.** — The board shall not allow any claim or demand against the county for services to any indigent person until eligibility has been established. The board shall, by resolution, authorize the expenditures of funds not exceeding an aggregate amount to provide for the emergency nonmedical assistance of any eligible indigent person. Bills for expenditures, duly verified under oath, shall be presented to the board and the board shall audit and pay such bills out of the proper fund of the county. Payment of approved claims of indigent persons by the county shall be controlled and determined by the provisions of chapter 16, title 31, Idaho Code. The county is not obligated to pay for services received by the applicant prior to the date of application, or to make payment to relatives. [I.C., § 31-3413, as added by 1992, ch. 83, § 3, p. 256.]

**31-3414. Repayment by recipient.** — By acceptance of county assistance an applicant agrees to repay the county for all or any portion of expenses paid, when the board finds the applicant is able to repay all or any portion of the charges over a reasonable period of time and/or has assets which can be encumbered for future repayment. Reimbursement for assistance shall be credited to the county indigent fund and need not be budgeted or appropriated in the manner required in chapter 16, title 31, Idaho Code, but shall be available for expenditure at any time for the purposes of the county indigent fund.

The board may provide for work repayment at no less than minimum wage, by such recipients as are employable.

Upon payment of charges for an indigent person, the county making the payment shall become subrogated to all the rights of the provider and to all rights of the indigent person or their legal representatives against any third parties who may be liable for such nonmedical charges. The county's right of subrogation in no way relieves the applicant or provider of responsibility as delineated in sections 31-3404, 31-3409, 31-3413 and 31-3415, Idaho Code. [I.C., § 31-3414, as added by 1992, ch. 83, § 3, p. 256.]

**31-3415. Divestiture.** — Applicants who have divested their assets or resources within three (3) months prior to applying for county assistance in order to become eligible shall be denied assistance. [I.C., § 31-3415, as added by 1992, ch. 83, § 3, p. 256.]

**31-3416. Violations and penalty.** — Any person who withholds information, or gives false or incomplete information on an application for the purposes of obtaining county aid to which they are not otherwise entitled, shall be guilty of a misdemeanor. [I.C., § 31-3416, as added by 1992, ch. 83, § 3, p. 256.]

**31-3417. Separability.** — If the provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the chapter, which can be given effect without the invalid provisions or applications, and to this end

the provisions of this chapter are declared to be severable. [I.C., § 31-3417, as added by 1992, ch. 83, § 3, p. 256.]

### **31-3418. Confidentiality — Proceedings and records of indigents.**

— All proceedings and records related to indigency, pursuant to chapter 34, title 31, Idaho Code, shall be exempt from disclosure pursuant to chapter 3, title 9, Idaho Code. [I.C., § 31-3418, as added by 1992, ch. 83, § 3, p. 256; am. 1999, ch. 30, § 9, p. 41.]

## **CHAPTER 35**

### **HOSPITALS FOR INDIGENT SICK**

#### **SECTION.**

- 31-3501. Declaration of policy.
- 31-3502. Definitions.
- 31-3503. Powers and duties of boards of county commissioners.
- 31-3503A. Powers and duties of administrator.
- 31-3503B. Reciprocal agreements — out-of-state treatment.
- 31-3504. Application for financial assistance.
- 31-3505. Time and manner of filing applications and requests.
- 31-3505A. Investigation of application or request.
- 31-3505B. Approval.
- 31-3505C. Initial decision by the board.
- 31-3505D. Appeal of initial determination.
- 31-3505E. Hearing on appeal of initial determination.
- 31-3505F. Arbitration.
- 31-3505G. Petition for judicial review of final determination.
- 31-3506. Obligated county.
- 31-3507. Notice of Admission and transfer of a medically indigent patient.
- 31-3508. Amount of aid for necessary medical services.
- 31-3509. Collections by providers.
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- 31-3510A. Reimbursement.
- 31-3511. Violations and penalties.
- 31-3512. Joint county hospitals.
- 31-3513. Election for issuance of bonds.

#### **SECTION.**

- 31-3514. Internal management — Accounts and reports.
- 31-3515. Lease or sale.
- 31-3515A. Conveyance, lease of county hospital to nonprofit corporation.
- 31-3516. Separability.
- 31-3517. Establishment of a catastrophic health care cost program.
- 31-3518. Administrative responsibility.
- 31-3519. Payment for services.
- 31-3520. Contract for provision of necessary medical services for the medically indigent.
- 31-3521. Employment of physician.
- 31-3522 — 31-3528. Application for county aid. [Repealed.]
- 31-3529 — 31-3549. [Reserved.]
- 31-3550. Declaration of public policy.
- 31-3551. Advisory panel for prelitigation consideration of indigent resource eligibility claims — Procedure.
- 31-3552. Appointment and composition of advisory panel.
- 31-3553. Advisory decisions of panel.
- 31-3554. Tolling of limitation periods during pendency of proceedings.
- 31-3555. Stay of court proceedings in interest of hearing before panel.
- 31-3556. Expenses for advisory panel members.
- 31-3557. Frequency of and agenda for meetings.

**31-3501. Declaration of policy.** — It is the policy of this state that each person, to the maximum extent possible, is responsible for his or her own medical care and to that end, shall be encouraged to purchase his or her own medical insurance with coverage sufficient to prevent them from needing to request assistance pursuant to this chapter. However, in order to safeguard the public health, safety and welfare, and to provide suitable facilities and provisions for the care and hospitalization of persons in this state, and, in the case of medically indigent persons, to provide for the payment thereof, the respective counties of this state and the administrator shall have the duties and powers as hereinafter provided. [I.C., § 31-3501,

as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 1, p. 410; am. 1996, ch. 410, § 2, p. 1357.]

## STATUTORY NOTES

**Cross References.** — Prelitigation consideration of indigent resource eligibility claims, §§ 31-3550 — 31-3557.

**Prior Laws.** — Former §§ 31-3501 — 31-3504 which comprised S.L. 1921, ch. 141, §§ 1-3; I.C.A., §§ 30-3301 — 30-3304; S.L. 1935, ch. 62, § 1; S.L. 1937, ch. 81, § 1; S.L. 1939, ch. 120, §§ 1-3; S.L. 1939, ch. 182, § 18; S.L. 1941, ch. 66, §§ 1-3; S.L. 1945, ch. 116, § 1; S.L. 1947, ch. 229, § 1; S.L. 1949, ch. 261, § 1; S.L. 1953, ch. 112, § 1; S.L. 1955, ch. 222, § 1; S.L. 1957, ch. 154, § 1; S.L. 1959, ch. 159, § 1; S.L. 1959, ch. 176, § 1; S.L. 1961, ch. 60, § 1; S.L. 1961, ch. 87, § 1; S.L.

1961, ch. 176, § 1; and S.L. 1963, ch. 139, §§ 1, 2 were repealed by S.L. 1974, ch. 302, § 11.

**Compiler's Notes.** — Section 8 of S.L. 1990, ch. 87 amended this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the amendment by S.L. 1990, ch. 87 never took effect.

## JUDICIAL DECISIONS

### ANALYSIS

Constitutionality.  
Construction.  
Out-of-state hospitals.  
Physician's fees.  
Purpose.  
Remedies.  
Residency.

### Constitutionality.

Former sections 31-3401 — 31-3410 and §§ 31-3501 — 31-3516, were not unconstitutional under Const., Art. 8, § 4 and Art. 12, § 4, because those constitutional provisions were adopted only to prevent private interests from gaining advantage at the expense of the taxpayer and were not intended to prohibit counties from giving aid to indigents; since the funds remain within the effective control of the municipality, it is apparent that the evils sought to be prevented by those constitutional provisions do not exist. *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

### Construction.

The language of this statute is merely hortatory, and does not purport to require the purchase of insurance as a prerequisite to qualification as medically indigent. *Bonner Gen. Hosp. v. Bonner County*, 133 Idaho 7, 981 P.2d 242 (1999).

### Out-of-State Hospitals.

When the definition of hospital is analyzed contextually in the statutes, it is clear that the meaning is not confined to those medical institutions within the state. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 101

Idaho 245, 611 P.2d 1030 (1980).

### Physician's Fees.

The emergency indigent medical care provided for in former § 31-3402, and former chapters 34 and 35 of Title 31, includes reasonable charges for doctor's services, as determined by the factfinder, whether or not the doctor is a paid staff employee of a hospital, or an independent practitioner. *Saxton v. Gem County*, 113 Idaho 929, 750 P.2d 950 (1988).

### Purpose.

The Legislature's general intent in enacting the medical indigency assistance statutes was twofold: to provide indigents with access to medical care and to allow hospitals to obtain compensation for services rendered to indigents. *St. Alphonsus Regional Medical Ctr., Ltd. v. Twin Falls County*, 112 Idaho 309, 732 P.2d 278 (1987).

### Remedies.

Because the legislature amended the Idaho Administrative Procedures Act in 1992, removing the language allowing modification of an agency decision, the district court correctly determined that it lacked statutory authority under § 67-5279 to enter a money judgment against the county on hospital's claim for reimbursement for indigent's treatment; hospital could have sought other possible reme-



dies through the contempt powers of the district court. *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996).

**Residency.**

The county is not relieved of its financial obligations to a medically indigent person injured while within the territorial limits of the county merely because such person was not a resident of the county or the state of Idaho when the injuries were suffered and did not subsequently become such a resident. *East Shoshone Hosp. Dist. v. Nonini*, 109 Idaho 937, 712 P.2d 638 (1985).

**Cited in:** *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498,

531 P.2d 588 (1975); *Braun v. Ada County*, 102 Idaho 901, 643 P.2d 1071 (1982); *University of Utah Hosp. ex rel. Harris v. Pence*, 104 Idaho 172, 657 P.2d 469 (1982); *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984); *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985); *Intermountain Health Care, Inc. v. Board of Comm'rs*, 109 Idaho 412, 707 P.2d 1051 (1985); *Idaho Falls Consol. Hosps. v. Board of Comm'rs*, 109 Idaho 881, 712 P.2d 582 (1985); *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989); *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 529, 915 P.2d 1387 (Ct. App. 1996).

**31-3502. Definitions.** — As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

(1) "Medically indigent" means any person who is in need of necessary medical services and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor, does not have income and other resources available to him from whatever source sufficient to pay for necessary medical services. Nothing in this definition shall prevent the board of county commissioners and administrator from requiring the applicant and obligated persons to reimburse the county and the catastrophic health care costs program, where appropriate, for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.

(2) "Hospital" means a facility licensed and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, excluding state institutions.

(3) "Dependent" means any person whom a taxpayer could claim as a dependent under the income tax laws of the state of Idaho.

(4) "Applicant" means any person who is or may be requesting financial assistance under this chapter.

(5) "Reimbursement rates" means the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended. For long-term care facilities, maximum "reimbursement rates" means the unadjusted medicaid rate of reimbursement allowed pursuant to the medical assistance program as determined by chapter 1, title 56, Idaho Code, or the unadjusted medicare rate of reimbursement established under title XVIII of the social security act, as amended, whichever is greater.

(6) "Board" means the board of county commissioners.

(7) "Obligated persons" means those persons who are legally responsible for an applicant.

(8) "County hospital" means any county approved institution or facility for the care of sick persons.

(9) "Administrator" means the board of the catastrophic health care cost program, as provided in section 31-3517, Idaho Code.

(10) "Catastrophic health care costs" means all necessary medical expenses for services which are incurred by a recipient for which the reimbursement rate exceeds in aggregate the sum of ten thousand dollars (\$10,000) in any twelve (12) consecutive month period.

(11) "Recipient" means an individual determined eligible for necessary medical services under this chapter.

(12) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where he or she actually lived for a consecutive period of thirty (30) days or more within the state of Idaho. A resident does not include a person who comes into this state for temporary purposes, including, but not limited to, education, vacation, or seasonal labor. Entry into active military duty shall not change a person's residence for the purposes of this chapter. Those physically present within the following facilities and institutions shall be residents of the county where they were residents prior to entering the facility or institution:

- (a) Correctional facilities;
- (b) Nursing homes or residential or assisted living facilities;
- (c) Other medical facility or institution.

(13) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care.

(14) "Provider" means any person, firm, or corporation certified or licensed by the state of Idaho or holding an equivalent license or certification in another state, that provides necessary medical services as it appears on an application for assistance pursuant to this chapter.

(15) "Third party applicant" means a person other than an obligated person who completes, signs and files an application on behalf of a patient.

(16) "Clerk" means the clerk of the board or his or her designee.

(17) "Resources" means all property, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, all forms of public assistance, crime victim's compensation, worker's compensation, veterans benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services over a period of up to five (5) years. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated persons' residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

(18)A. "Necessary medical services" means a requested or provided medical service required in order to identify or treat a medically indigent person's health condition, illness or injury and is:

- (a) Consistent with the symptoms, diagnosis or treatment of the medical indigent's condition, illness or injury;
- (b) In accordance with generally accepted standards of medical or surgical practice then prevailing in the community where the services were provided;

- (c) Furnished on an outpatient basis whenever it is safe, efficient and reasonable to do so;
  - (d) Not provided primarily for the convenience of the medically indigent person or the provider;
  - (e) The standard, most economical service or item that can safely, reasonably and ethically be provided.
- B. Necessary medical services shall not include the following:
- (a) Bone marrow transplants;
  - (b) Organ transplants;
  - (c) Elective, cosmetic and/or experimental procedures;
  - (d) Services related to, or provided by, residential and/or shelter care facilities;
  - (e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;
  - (f) Medicare copayments and deductibles;
  - (g) Services provided by, or available to an applicant from state, federal and local health programs; and
  - (h) Medicaid copayments and deductibles.

Provided however, each board may determine, by ordinance or resolution duly adopted in its county, to include as necessary medical services additional services not covered in this section. Necessary medical services provided by this option shall not be paid by the catastrophic health care costs program, and shall remain the liability of the respective county. [I.C., § 31-3502, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 6, p. 462; am. 1980, ch. 185, § 2, p. 410; am. 1982, ch. 190, § 1, p. 511; am. 1983, ch. 215, § 1, p. 594; am. 1984, ch. 99, § 1, p. 227; am. 1988, ch. 332, § 2, p. 994; am. 1989, ch. 374, § 1, p. 942; am. 1991, ch. 233, § 7, p. 553; am. 1992, ch. 83, § 4, p. 256; am. 1993, ch. 112, § 1, p. 283; am. 1996, ch. 410, § 3, p. 1357; am. 1998, ch. 109, § 1, p. 373; am. 2000, ch. 274, § 2, p. 799; am. 2000, ch. 317, § 1, p. 1067; am. 2004, ch. 300, § 1, p. 837; am. 2005, ch. 281, § 1, p. 915.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3502 was repealed. See Prior Laws, § 31-3501.

**Amendments.** — This section was amended by two 2000 acts — ch. 274, § 2 and ch. 317 § 1, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment by ch. 274, § 2, substituted “residential or assisted living facilities” for “residential care facilities” in subdivision (12)(b).

The 2000 amendment by ch. 317, § 1, inserted “within the state of Idaho” following “thirty (30) days or more” in subsection (12).

**Federal References.** — Titles XVIII and XIX of the social security act, referred to in subsection (5), are compiled as 42 U.S.C.

§ 1395 et seq. and 42 U.S.C. § 1396 et seq., respectively.

**Compiler’s Notes.** — Section 9 of S.L. 1990, ch. 87 amended this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor’s signature on April 13, 1991. Therefore, the amendment of this section by S.L. 1990, ch. 87 never took effect.

**Effective Dates.** — Section 2 of S.L. 1989, ch. 374 declared an emergency. Approved April 5, 1989.



## JUDICIAL DECISIONS

## ANALYSIS

Available defined.  
Available resources.  
—Liquid.  
—Exempt property.  
Level of responsibility.  
Medically indigent.  
—Reason for benefits.  
Necessary medical services.  
Other available resources.  
Out-of-state hospitals.  
Reimbursement rate.  
Resident.  
Self-inflicted injuries.

**Available Defined.**

"Available" in subdivision (1) of this section denotes currently or immediately obtainable income or resources and a corresponding present ability to pay, rather than a future ability to pay, or a potential future ability to pay. *University of Utah Hosp. & Medical Ctr. v. Twin Falls County*, 122 Idaho 1010, 842 P.2d 689 (1992).

The definition of "available" does not necessarily mean the present ability to pay all medical expenses immediately, but rather present ability to pay the medical expenses incurred within a reasonable time. *Jefferson County v. Eastern Id. Regional Medical Ctr.*, 127 Idaho 495, 903 P.2d 84 (1995).

**Available Resources.**

In determining whether an applicant for medical assistance is medically indigent only those resources actually available to an applicant can be considered in determining his eligibility and assets which cannot be turned into cash, i.e., which are not liquid, must be excluded in determining the extent of an applicant's resources. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

For a resource to be "available" and considered with respect to medically indigent status, it must have a net positive value and be liquid; this is a question of fact. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985).

If state or federal law does not prohibit creditors from reaching a given resource (including income) of a medical debtor, and the resource's fair market value (exclusive of liabilities) exceeds its liabilities, and the debtor can readily convert the resource into cash, then the resource is "available" under subdivision (1) of this section for the purpose of determining medical indigency. *Idaho Falls Consol. Hosps. v. Board of Comm'rs*, 109 Idaho 881, 712 P.2d 582 (1985).

In determining the resources of a medically indigent person any assets which are exempt from attachment or levy cannot be considered as resources available. *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989).

In determining the resources of a medically indigent person, a resource must have a positive value greater than its liabilities, encumbrances, and indebtedness, and must be liquid and readily convertible into cash. *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989).

Where an applicant's minimal income could not retire his debt within three years, regardless of what "lifestyle choices" he might make, and where the prior unrealized opportunity to purchase insurance did not constitute an available resource, the county commission's decision to deny the applicant medical indigency benefits was arbitrary, capricious and an abuse of discretion. *Bonner Gen. Hosp. v. Bonner County*, 133 Idaho 7, 981 P.2d 242 (1999).

Patient was not eligible for medical indigency benefits where he had discretionary income which was enough to pay for services, regardless of the fact that he had other outstanding debts with the same hospital. *Sacred Heart Med. Ctr. v. Kootenai County Comm'rs*, 136 Idaho 787, 41 P.3d 215 (2001).

**—Liquid.**

It was proper to defer to the commissioners on whether defendant's assets were liquid because the question of whether a resource was liquid, was a question of fact and was, therefore, for the board of county commissioners, and not for the appellate courts to decide and commissioners' finding was supported by substantial evidence. *Jefferson County v. Eastern Id. Regional Medical Ctr.*, 127 Idaho 495, 903 P.2d 84 (1995).

**—Exempt Property.**

The district court erred in affirming county's consideration of the equity in patient's

home below the homestead exemption and patient's social security and railroad retirement benefits as "resources available" in making a determination on the issue of medical indigency, as these resources were exempt from levy or similar legal process. *Idaho Falls Consol. Hosps. v. Board of Comm'rs*, 109 Idaho 881, 712 P.2d 582 (1985).

Patient's failure to file a declaration of homestead under former § 55-1203 did not leave homestead vulnerable to attachment, and it was not a "resource available" under subdivision (1) of this section; the patient could invoke the protection of the homestead exemption by filing a declaration of homestead prior to the attachment of any lien on her home. *Idaho Falls Consol. Hosps. v. Board of Comm'rs*, 109 Idaho 881, 712 P.2d 582 (1985).

### **Level of Responsibility.**

Although the board made a factual determination that the applicants were "sick persons," this did not alter or modify the level of responsibility placed on the counties by the legislature. This is a discretionary form of public assistance which the county has opted not to assume. The supreme court will not impose such an obligation without a statutory mandate from the legislature. *Shobe v. Ada County*, 130 Idaho 580, 944 P.2d 715 (1997).

### **Medically Indigent.**

Subdivision (1) of this section does not require that an applicant have no assets; it requires only that his medical expenses exceed his available resources. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), *rev'd* on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

The legislature did not intend that a person be completely destitute or devoid of all resources in order to be considered medically indigent, but only that the person be unable to pay for necessary medical services. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

Where a review of the record clearly demonstrated that claimant did not have income and resources available which would enable him to pay for the emergency medical services provided for his wife, the district court did not err in finding there was no basis in fact for the commissioners' decision to deny claimant's application for benefits on the basis that he was not a medically indigent person. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

This section does not state or imply that the parents or guardians stand in the place of the child, or that the child, whether or not he or she has resources, is considered not to exist for the purpose of determining medical indigency. *Intermountain Health Care, Inc. v.*

*Board of Comm'rs*, 109 Idaho 412, 707 P.2d 1051 (1985).

Where the balance due hospital exceeded the "resources available" to patient, which included two vehicles and checking and savings accounts, the patient was medically indigent as a matter of law. *Idaho Falls Consol. Hosps. v. Board of Comm'rs*, 109 Idaho 881, 712 P.2d 582 (1985).

To establish indigency, an applicant need not be completely destitute or devoid of all resources; all that is required is a showing that the person is unable to pay for necessary medical services. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

Under Idaho's medical indigency statutes, the applicant bears the burden of proving medical indigency. However, this duty is not absolute. The clerk of the board of county commissioners has a reciprocal duty to make reasonable inquiry into the grounds for the application. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

The commissioner's decision that defendant was not medically indigent because he had ample resources to pay for his medical expenses but for his voluntary abuse of credit cards, which were non-judicial obligations having no priority over the medical expenses incurred, was supported by substantial and competent evidence. *Jefferson County v. Eastern Id. Regional Medical Ctr.*, 127 Idaho 495, 903 P.2d 84 (1995).

Because a pending medicaid application is not considered an available resource in determining qualification for medical indigency, hospital could not claim the patient became medically indigent after her admission when her medicaid application was denied; thus, § 31-3504 did not apply and extend the filing deadline for hospital's medical indigency application. *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 529, 915 P.2d 1387 (Ct. App. 1996).

### **—Reason for Benefits.**

The policy behind providing medical indigency benefits is to assist people who are "truly needy" with medical expenses, not necessarily to assist people who have the financial ability to pay were it not for their voluntary abuse of credit cards or the lifestyle choices they made. *Jefferson County v. Eastern Id. Regional Medical Ctr.*, 127 Idaho 495, 903 P.2d 84 (1995).

### **Necessary Medical Services.**

The board of county commissioners' conclusion that the services were not necessary medical services was overturned where it was unsupported by substantial, competent evidence and was clearly erroneous. *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000).

Medical center did not provide emergency



services to the patient since immediate medical care was not rendered; none of the medical reports submitted to the county indicated that surgery on the patient was performed on an emergency basis, and as such, because the center's application for reimbursement was untimely for non-emergency services, the county properly denied the application. *Sacred Heart Med. Ctr. v. Nez Perce County Comm'rs*, 138 Idaho 215, 61 P.3d 572 (2002).

#### **Other Available Resources.**

A hospital's uncompensated services obligation under the federal Hill-Burton Act (42 U.S.C. § 291 et seq.), was not a resource available under subdivision (1) of this section which would preclude applicants from obtaining county medical assistance if they were otherwise qualified to receive it. *Braun v. Ada County*, 102 Idaho 901, 643 P.2d 1071 (1982).

When the Board first denied the application for medical indigency benefits, the pending worker's compensation claim suggested that there might be other available resources which would pay the medical expenses; so plaintiff did not become medically indigent as defined in subsection (1) of this section until the Industrial Commission denied his claim and it was actually determined that the worker's compensation benefits were not available as a source of payment. *St. Alphonsus Regional Medical Ctr., Ltd. v. Canyon County*, 120 Idaho 420, 816 P.2d 977 (1991).

Assets which consisted of applicant's equity in a house and two automobiles were "other resources available" as provided for in subdivision (1) of this section. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

The possibility of future benefits from other governmental agencies did not constitute an available resource relieving a county of its obligation to pay a medical indigency claim until such time that a final decision on eligibility for those benefits was rendered. *University of Utah Hosp. & Medical Ctr. v. Twin Falls County*, 122 Idaho 1010, 842 P.2d 689 (1992).

Only those resources actually available to an applicant can be considered for purposes of eligibility for medical indigency benefits, and the board of county commissioners' finding that other resources were available to the patient was contrary to the evidence. *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000).

#### **Out-of-State Hospitals.**

When the definition of hospital is analyzed contextually in the statutes, it is clear that the meaning is not confined to those medical institutions within the state. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 101

Idaho 245, 611 P.2d 1030 (1980).

A facility may provide a community service for those people it treats even though they do not live in the same state in which the hospital is situated. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 101 Idaho 245, 611 P.2d 1030 (1980).

#### **Reimbursement Rate.**

Where the patient's medical expenses were about \$35,000, and the insurer paid about \$26,000 to the hospital, leaving an unpaid balance of about \$9,000, the county was only obligated to pay the difference between the reimbursement rate (defined by subdivision (4) of this section and stipulated to be 78%) and the amount paid by other sources, or about \$1,500, not the balance of the total charges after the amount received by other sources was deducted, up to the reimbursement rate, or about \$9,000. *University of Utah Hosp. v. Jefferson County*, 111 Idaho 1, 720 P.2d 184 (1986).

There was substantial and competent evidence to support the county's conclusion that the decedent was not an Idaho resident because: (1) he did not intend to remain in Idaho as he listed a Montana address on his employment application in Montana and he left blank the space for his permanent address on his application, which he could have used to list an Idaho residence if he intended to remain an Idaho resident; and (2) the decedent's daughter testified that he did not intend to return to Idaho; therefore, as the decedent was not an Idaho resident, pursuant to subsection (12), substantial evidence in the record supported the county's decision denying the medical center's request for medical assistance to pay for the medical services the decedent received at the medical center. *E. Idaho Reg'l Med. Ctr. v. Ada County Bd. of Comm'rs (In re Hamlet)*, 139 Idaho 882, 88 P.3d 701 (2004).

#### **Resident.**

For indigency benefits under this section, the statute provides the proper standard for determining residency in the state is comprised of two parts: (1) physical presence and (2) an intent to remain. *E. Idaho Reg'l Med. Ctr. v. Ada County Bd. of Comm'rs (In re Hamlet)*, 139 Idaho 882, 88 P.3d 701 (2004).

Subsection (12) is not void for vagueness, and does not violate equal protection, where the indigent patient clearly was not a resident of Idaho; the payment of medical indigency benefits only to persons who were physically present in Idaho for at least 30 days, and intending to remain in Idaho, was rationally related to the legitimate governmental interest of allocating limited funds. *E. Idaho Reg'l Med. Ctr. v. Minidoka County (In re Bermudes)*, 141 Idaho 157, 106 P.3d 1123 (2005).



**Self-Inflicted Injuries.**

Subdivision (1) of this section does not exclude persons whose need arose from self-inflicted injuries. *St. Alphonsus Regional Medical Ctr., Ltd. v. Twin Falls County*, 112 Idaho 309, 732 P.2d 278 (1987).

**Cited in:** *University of Utah Hosp. & Medical Ctr. v. Bethke*, 98 Idaho 876, 574 P.2d 1354 (1978); *Caldwell Mem. Hosp. v. Board of*

*County Comm'rs*, 107 Idaho 33, 684 P.2d 1010 (Ct. App. 1984); *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150 (1985); *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988); *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000); *Sacred Heart Med. Ctr. v. Nez Perce County*, 136 Idaho 448, 35 P.3d 265 (2001).

**31-3503. Powers and duties of boards of county commissioners.**

— The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Care for and maintain the medically indigent residents of their counties as provided in this chapter up to ten thousand dollars (\$10,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code.

(2) Have the right to contract, transfer patients, negotiate provider agreements, and all other powers incident to the duties created by this chapter.

(3) From July 1, 1997, through June 30, 1998, pay for emergency services for a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and when necessary, for costs of transfer to the nonresident's place of residence, up to five thousand dollars (\$5,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code, unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement.

(4) Have the jurisdiction and power to provide county hospitals and public general hospitals for the county and others who are sick, injured, maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential or assisted living facilities as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said boards may levy an additional tax of not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the county. The term "public general hospitals" as used in this subsection shall be construed to include nursing homes. [I.C., § 31-3503, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 3, p. 410; am. 1982, ch. 190, § 2, p. 511; am. 1983, ch. 215, § 2, p. 594; am. 1989, ch. 193, § 2, p. 475; am. 1991, ch. 233, § 8, p. 553; am. 1993, ch. 112, § 2, p. 283; am. 1995, ch. 9, § 1, p. 14; am. 1995, ch. 82, § 5, p. 218; am. 1996, ch. 322, § 14, p. 1029; am. 1996, ch. 410, § 4, p. 1357; am. 1997, ch. 174, § 1, p. 492; am. 2000, ch. 274, § 3, p. 799.]

## STATUTORY NOTES

**Cross References.** — Prelitigation consideration of indigent resource eligibility claims, §§ 31-3550 — 31-3557.

Treatment for persons suffering from chronic renal diseases by vocational rehabilitation program, §§ 33-2307, 33-2308.

**Prior Laws.** — Former § 31-3503 was repealed. See Prior Laws, § 31-3501.

**Amendments.** — This section was amended by two 1996 acts — ch. 322, § 14, effective January 1, 1997, and ch. 410, § 4, effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 322, § 14, in subdivision (1), deleted the last sentence which read, "Such levy shall be exempt from the limitation imposed in section 63-923(1), Idaho Code."

The 1996 amendment, by ch. 410, § 4, in subdivision (1), substituted "residents of their counties" for ", and may provide for the care of other sick persons", inserted "in the aggregate over a twelve (12) month period" and deleted the last portion which read, ", and for this purpose said boards are authorized to levy an ad valorem tax not to exceed ten one-hundredths of one percent (0.10%) of the market

value for assessment purposes of all taxable property in the county. Such levy shall be exempt from the limitation imposed in section 63-923(1), Idaho Code"; added subdivisions (2) and (3); and redesignated former subdivision (2) as subdivision (4).

**Compiler's Notes.** — Section 10 of S.L. 1990, ch. 87 amended this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the amendment of this section by S.L. 1990, ch. 87 never took effect.

Section 7 of S.L. 1982, ch. 190 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.** — Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

## JUDICIAL DECISIONS

### ANALYSIS

Constitutionality.

Level of responsibility.

Medical indigency status.

### Constitutionality.

Former sections 31-3401 — 31-3410 and §§ 31-3501 — 31-3516, were not unconstitutional under Const., Art. 8, § 4 and Art. 12, § 4, because those constitutional provisions were adopted only to prevent private interests from gaining advantage at the expense of the taxpayer and were not intended to prohibit counties from giving aid to indigents; since the fund remains within the effective control of the municipality, it is apparent that the evils sought to be prevented by those constitutional provisions do not exist. *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

### Level of Responsibility.

Although the board made a factual determination that the applicants were "sick persons," this did not alter or modify the level of responsibility placed on the counties by the

legislature. This is a discretionary form of public assistance which the county has opted not to assume. The supreme court will not impose such an obligation without a statutory mandate from the legislature. *Shobe v. Ada County*, 130 Idaho 580, 944 P.2d 715 (1997).

### Medical Indigency Status.

Where an individual fell into calamitous circumstances resulting from the unsuccessful suicide attempt, he was entitled to medical indigency assistance. *St. Alphonsus Regional Medical Ctr., Ltd. v. Twin Falls County*, 112 Idaho 309, 732 P.2d 278 (1987).

The language of subsection (1) of this section is mandatory, providing that counties "shall" care for indigents. *Bonner Gen. Hosp. v. Bonner County*, 133 Idaho 7, 981 P.2d 242 (1999).

**Cited in:** *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

## OPINIONS OF ATTORNEY GENERAL

The attorney general opined that the proposed One Percent Initiative would undermine the ability of government to function in times of emergency and it would conflict with

special levies to fund such unpredictable but legally-required items as tort claim judgments and catastrophic medical indigency bills. OAG 91-9.

## RESEARCH REFERENCES

**A.L.R.** — Right to maintain action under Hill-Burton Act (42 U.S.C. § 291 et seq.) to

compel hospital to provide services to persons unable to pay therefor, 11 A.L.R. Fed. 683.

**31-3503A. Powers and duties of administrator.** — The administrator shall, under such limitations and restrictions as are prescribed by law:

(1) Pay for necessary medical services for a resident medically indigent person where the reimbursement rate for the claim exceeds in aggregate the sum of ten thousand dollars (\$10,000) during a twelve (12) month period;

(2) From July 1, 1997, through June 30, 1998, pay for emergency services of a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and, when necessary, for costs of transfer to the nonresident's place of residence, where the reimbursement rate for the claim exceeds in the aggregate during a twelve (12) month period, the sum of five thousand dollars (\$5,000), unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement;

(3) Require, as the administrator deems necessary, annual reports from each county and each hospital and provider including, but not limited to, the following:

(a) From each county and for each applicant:

(i) case number and the date services began;

(ii) age;

(iii) residence;

(iv) sex;

(v) diagnosis;

(vi) income;

(vii) family size;

(viii) amount of costs incurred including provider, legal and administrative charges;

(ix) approval or denial; and

(x) reasons for denial.

(b) From each hospital:

(i) 990 tax forms or comparable information;

(ii) cost of charges where charitable care was provided; and

(iii) administrative and legal costs incurred in processing claims under this chapter. [I.C., § 31-3503A, as added by 1996, ch. 410, § 5, p. 1357; am. 1997, ch. 174, § 2, p. 492.]



## STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1997, ch. 144 declared an emergency. Approved March 19, 1997.

**31-3503B. Reciprocal agreements — out-of-state treatment. —**

(1) The governor of the state of Idaho or his or her designee is empowered to negotiate reciprocal agreements with other states for the provision of necessary medical services for residents of this and other states.

(2) No payment shall be made for necessary medical services to an out-of-state provider unless a reciprocal agreement has been entered into by the governor of this state, or unless contracted for pursuant to sections 31-3520 and 31-3522, Idaho Code. [I.C., § 31-3503B, as added by 1996, ch. 410, § 6, p. 1357.]

## STATUTORY NOTES

**Compiler's Notes.** — Section 31-3522, relating to an application for county aid, was repealed by S.L. 1996, ch. 410, § 1. For present similar provision, see § 31-3504.

**Effective Dates.** — Section 27 of S.L.

1996, ch. 410 declared an emergency and provided that § 6 would be in full force and effect on and after its passage and approval. Approved March 20, 1996.

**31-3504. Application for financial assistance. —** (1) An applicant requesting assistance under this chapter shall complete a written application on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association. The truth of the matters contained in the application shall be sworn to by the applicant. The application shall be signed by the applicant or on the applicant's behalf and filed in the clerk's office.

(2) If a third party application is filed, the application shall be as complete as practical and presented in the same form and manner as set forth above.

(3) Follow-up necessary medical services based on a treatment plan, for the same condition, preapproved by the board, may be provided for a maximum of six (6) months from the date of the original application without requiring an additional application; however, a request for additional treatment not specified in the approved treatment plan shall be filed with the clerk ten (10) days prior to receiving services. Beyond the six (6) months, requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services and an updated application may be requested by the board.

(4) Upon application for financial assistance pursuant to this chapter an automatic lien shall attach to all real and personal property of the applicant and on insurance benefits to which the applicant may become entitled. The lien shall also attach to any additional resources to which it may legally attach not covered above. The lien created by this section may be, in the discretion of the board, perfected as to real property and fixtures by recording, in any county recorder's office in this state in which the applicant

and obligated party own property a notice of application for medical indigency benefits on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association, which form shall be recorded as provided herein within thirty (30) days from receipt of an application, and such lien, if so recorded, shall have a priority date as of the date the necessary medical services were provided. The lien created by this section may also be, in the discretion of the board, perfected as to personal property by filing with the secretary of state within thirty (30) days of receipt of an application, a notice of application in substantially the same manner as a filing under chapter 9, title 28, Idaho Code, except that such notice need not be signed and no fee shall be required, and, if so filed, such lien shall have the priority date as of the date the necessary medical services were provided. An application for assistance pursuant to this chapter shall waive any confidentiality granted by state law to the extent necessary to carry out the intent of this section. [I.C., § 31-3504, as added by 1996, ch. 410, § 7, p. 1357; am. 1997, ch. 92, § 1, p. 217; am. 2000, ch. 317, § 2, p. 1067.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3504, which comprised I.C., § 31-3504, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 7, p. 462; am. 1988, ch. 332, § 8, p. 994; am. 1991, ch. 233, § 9, p. 553, was repealed by S.L. 1996, ch. 410, § 1, effective July 1, 1996.

### JUDICIAL DECISIONS

#### ANALYSIS

Applicant.  
Construction.  
Determination of indigency.  
Duty of hospital.  
Hospital bill.  
Notice.  
Prejudice.

#### Applicant.

The record established that an application was filed by plaintiff's mother within the proper time period. The fact that it was the mother, rather than the hospital, which filed the application is of no consequence or significance. *St. Alphonsus Regional Medical Ctr., Ltd. v. Canyon County*, 120 Idaho 420, 816 P.2d 977 (1991).

#### Construction.

The time requirements upon the applicant and the county under this section and former § 31-3505 are strictly enforced. *University of Utah Hosp. v. Ada County*, 111 Idaho 1023, 729 P.2d 1086 (Ct. App. 1986).

#### Determination of Indigency.

Bankruptcy of claimant subsequent to her admission to hospital and receipt of treatment could not be used as a benchmark for establishing her indigency. A determination of indigency must be made shortly after patient is admitted for treatment or soon after treat-

ment is finished. The purpose of the statutes is to assure treatment for people who are then unable to pay for their care. It is not a system by which hospitals may collect on accounts receivable which have become unrecoverable due to bankruptcy. *University of Utah Hosp. v. Board of County Comm'rs*, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

When the board first denied the application for medical indigency benefits, a pending worker's compensation claim suggested that there might be other available resources which would pay the medical expenses; so plaintiff did not become medically indigent, as defined in § 31-3502(1), until the industrial commission denied his claim and it was actually determined that the worker's compensation benefits were not available as a source of payment. *St. Alphonsus Regional Medical Ctr., Ltd. v. Canyon County*, 120 Idaho 420, 816 P.2d 977 (1991).

Because a pending medicaid application is not considered an available resource in deter-

mining qualification for medical indigency, hospital could not claim the patient became medically indigent after her admission when her medicaid application was denied; thus, this section did not apply and extend the filing deadline for hospital's medical indigency application. *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 529, 915 P.2d 1387 (Ct. App. 1996).

Statutory lien for indigent medical services did not survive bankruptcy filing, where the debtors never owned any real property to which the lien could attach. *Mechling v. Bonner County, Office of County Assistance*, 284 Bankr. 127 (Bankr. D. Idaho 2002).

### **Duty of Hospital.**

Although the hospital may have been misled by the indigent patient's false assurance that the application had been completed and filed with the county, the hospital's reliance on the claimant to complete and file the application with the county was not sufficient to discharge the hospital's duty of exercising reasonable diligence in presenting some proof of indigency to the county to support the hospital's claim, as soon after the patient's admission as was possible. *University of Utah Hosp. v. Board of County Comm'rs*, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

The hospital's action and reliance on the county's denial of plaintiff's claim based on possible workman's compensation was reasonable and the hospital's prompt action immediately upon learning that coverage under the worker's compensation claim had been denied, and filing an application that same day met and satisfied the required standard of diligence, even though it was five days past the statutory period. *St. Alphonsus Regional Medical Ctr., Ltd. v. Canyon County*, 120 Idaho 420, 816 P.2d 977 (1991).

### **Hospital Bill.**

There is no requirement that the indigent applicant include the hospital bill with his application; thus, it was clearly inappropriate for county commissioners to deny an application for medical indigency assistance on the sole ground that information regarding the medical bill had not been submitted, without ever notifying an indigent applicant that he or she was expected to provide such information. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

### **Notice.**

Where the application form submitted by the applicant indicated that she was an indigent with no known assets and that she had no other sources to look to for payment of her medical bills, and the application had been signed by someone on behalf of the applicant and notarized, the application met the requirement of this section that the county be

notified as soon as practical of a patient's indigency; therefore, the application initiated the claim procedure, even though the application was not on the standard form provided by the board of county commissioners. *University of Utah Hosp. v. Ada County*, 111 Idaho 1023, 729 P.2d 1086 (Ct. App. 1986).

Failure to provide the notice contemplated by this section could not serve as a ground for denying benefits where the county was not prejudiced by the lack of notice; thus, in the absence of any showing of prejudice or unnecessary expense caused by the lack of notice the district court did not err in ruling that the commissioners erroneously denied the application on the ground that the county had not been given notice of the emergency medical services as required under this section. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

The inability to explore other treatment possibilities was ample reason to illustrate prejudice and justify the county's refusal to consider hospital's application for reimbursement for patient's care under the medical indigency statutes. Inquiry into whether a county is prejudiced by untimely filing is proper, even in non-emergency cases. *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 529, 915 P.2d 1387 (Ct. App. 1996).

### **Prejudice.**

County commissioners were not entitled to reject the hospital's claim to payment for services rendered to a medically indigent patient because it was not timely filed without first making a factual determination that the county was prejudiced by the hospital's late filing. *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988).

Where county submitted an affidavit setting out its claim that it was prejudiced in several different respects as a result of hospital's failure to timely file application on behalf of medically indigent person, such matter having been raised should have been remanded to county commissioners for hearing and findings on the issue of prejudice to the county. *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988).

An untimely application to the county for reimbursement concerning the care furnished to a medically indigent person is not necessarily invalid, as the issue of prejudice to the county resulting from a lack of notice is one which should be inquired into prior to approving or denying an application for indigent medical emergency assistance. *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989).

**Cited in:** *IHC Hosps., Inc. v. Teton County*, 139 Idaho 188, 75 P.3d 1198 (2003).



## DECISIONS UNDER PRIOR LAW

**Proof of Indigency.**

The district court, and the county clerk as well, in making a determination of medical indigency are required to apply the legislative definition of that term. *University of Utah Hosp. & Medical Ctr. v. Eriksen*, 100 Idaho 18, 592 P.2d 430 (1979).

An applicant for medical assistance bears the burden of proving medical indigency. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), *rev'd* on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Where a review of the record clearly demonstrated that claimant did not have income and resources available which would enable him to pay for the emergency medical services provided for his wife, the district court did not err in finding there was no basis in fact for the commissioners' decision to deny claimant's application for benefits on the basis that he was not a medically indigent person. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

If a hospital gives emergency treatment to an indigent in an emergency situation without the county board of commissioners' prior approval, as the hospital is allowed to do under former law concerning approval of

claims, then the hospital must use diligence in gathering all reasonably available information relevant to the indigency of the patient, and the hospital should do so as soon after the admission of the patient as is possible. The county, however, cannot place the entire burden of proving indigency, and the entire risk of non-payment, upon the hospital; unless there is reason to believe the hospital has been recalcitrant in investigating the claim of indigency, then, after the presentation of some proof of indigency (not necessarily a *prima facie* showing) by the hospital, the claim must be paid — This, assuming proof that the care was actually given, that it was necessary, and that the charges rendered therefor were reasonable. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, *overruled in part*, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

Under Idaho's medical indigency statutes, the applicant bears the burden of proving medical indigency. However, this duty is not absolute. The clerk of the board of county commissioners has a reciprocal duty to make reasonable inquiry into the grounds for the application. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

**31-3505. Time and manner of filing applications and requests. —**

Applications and requests for necessary medical services shall be filed with the clerk according to the following time limits. Filing is complete upon receipt by the clerk.

(1) An application for nonemergency necessary medical services shall be filed ten (10) days prior to receiving services from the provider.

(2) An application for emergency necessary medical services shall be made any time within thirty-one (31) days beginning with the first day of the provision of necessary medical services from the provider or in the case of hospitalization, thirty-one (31) days beginning with the date of admission.

(3) Requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services.

(4) A delayed application for necessary medical services may be filed up to one hundred eighty (180) days beginning with the first day of the provision of necessary medical services provided that:

(a) Written documentation is included with the application or no later than forty-five (45) days after an application has been filed showing that a bona fide application or claim has been filed for social security disability insurance, supplemental security income, third party insurance, medic-aid, medicare, crime victim's compensation, and/or worker's compensation. A bona fide application means that:

(i) The application was timely filed within the appropriate agency's application or claim time period; and

- (ii) Given the circumstances of the patient and/or obligated persons, the patient and/or obligated persons, and given the information available at the time the application or claim for other resources is filed, would reasonably be expected to meet the eligibility criteria for such resources; and
  - (iii) The application was filed with the appropriate agency in such a time and manner that, if approved, it would provide for payment coverage of the bills included in the county application; and
  - (iv) In the discretion of the board, bills on a delayed application which would not have been covered by a successful application or timely claim to the other resource(s) may be denied by the board as untimely; and
  - (v) In the event an application is filed for supplemental security income, an Idaho medicaid application must also have been filed within the department of health and welfare's application or claim time period to provide payment coverage of eligible bills included in the county application.
- (b) Failure by the patient and/or obligated persons to complete the application process described in this section, up to and including any reasonable appeal of any denial of benefits, with the applicable program noted in paragraph (a) of this subsection, shall result in denial of the county assistance application.
- (5) Any application or request which fails to meet the provisions of this section, and/or other provisions of this chapter, shall be denied.
- (6) In the event that a county determines that a different county is the obligated county, an application may be filed in the other county within thirty (30) days of the date of the initial county denial. [I.C., § 31-3505, as added by 1996, ch. 410, § 8, p. 1357; am. 2000, ch. 317, § 3, p. 1067; am. 2004, ch. 300, § 2, p. 837.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3505, which comprised I.C., § 31-3505, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 8, p. 462; am. 1988, ch. 332, § 9, p. 994; am. 1991, ch. 233, § 10, p. 553, was repealed by S.L. 1996, ch. 410, § 1, effective July 1, 1996.

#### JUDICIAL DECISIONS

**Cited in:** Sacred Heart Med. Ctr. v. Nez Perce County, 136 Idaho 448, 35 P.3d 265 (2001).

#### DECISIONS UNDER PRIOR LAW

##### **Untimely Claim.**

Under former law, a medically indigent patient or the treating hospital had forty-five days following admission of the patient to the hospital in which to file a claim with the board for payment of patient's costs of hospitaliza-

tion; thus, because a claim was not filed until sixty-six days after the patient was admitted to the hospital, the board was correct in rejecting payment of the claim. Caldwell Mem. Hosp. v. Board of County Comm'rs, 107 Idaho 33, 684 P.2d 1010 (Ct. App. 1984).

**31-3505A. Investigation of application or request.** — (1) The clerk shall interview the applicant and investigate the information provided on

the application, along with all other required information, in accordance with the procedures established by the board and this chapter. The clerk shall promptly notify the applicant, or third party filing an application on behalf of an applicant, of any material information missing from the application which, if omitted, may cause the application to be denied for incompleteness. In addition, any provider requesting notification shall be notified at the same time. When necessary, such persons as may be deemed essential, may be compelled by the clerk to give testimony and produce documents and other evidence under oath in order to complete the investigation. The clerk is hereby authorized to issue subpoenas to carry out the intent of this provision and to otherwise compel compliance in accordance with provisions of Idaho law.

(2) The applicant or third party filing an application on behalf of an applicant to the extent they have knowledge, shall have a duty to cooperate with the county in investigating, providing documentation, submitting to an interview and ascertaining eligibility and shall have a continuing duty to notify the responsible county of the receipt of resources after an application has been filed.

(3) The clerk shall have twenty (20) days to complete the investigation of an application for nonemergency necessary medical services.

(4) The clerk shall have forty-five (45) days to complete the investigation of an application for emergency necessary medical services.

(5) In the case of follow-up treatment, the clerk shall have ten (10) days to complete an interview on a request for additional treatment to update the financial and other information contained in a previous application for an original diagnosis in accordance with a treatment plan previously approved by the board.

(6) Upon completion of the interview and investigation of the application or request, a statement of the clerk's findings shall be filed with the board. [I.C., § 31-3505A, as added by 1996, ch. 410, § 9, p. 1357.]

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Burden of proof.  
Emergency treatment.  
Expert testimony.  
Failure to investigate.  
Proper party to appeal.

#### **Burden of Proof.**

Where neither parent can be found and the claimant hospital has made reasonable effort to ascertain the child's indigency, the hospital will be held to have made a prima facie showing of medical indigency, and the burden of proof on the question of indigency will then shift to the county. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v.*

*Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

Under Idaho's medical indigency statutes, the applicant bears the burden of proving medical indigency. However, this duty is not absolute. The clerk of the board of county commissioners has a reciprocal duty to make reasonable inquiry into the grounds for the application. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).



A duty must be placed upon the county to insure that medical indigency applications are accurate and authentic; placing the burden of proving medical indigency and the burden of refuting all reasonable inferences to the contrary on the applicant would defeat this purpose. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

#### **Emergency Treatment.**

If a hospital gave emergency treatment to an indigent in an emergency situation without the county board of commissioners' prior approval, as the hospital was allowed to do under former law concerning allowance of approved claims only, then the hospital must have used diligence in gathering all reasonably available information relevant to the indigency of the patient, and the hospital should do so as soon after the admission of the patient as is possible. The county, however, could not place the entire burden of proving indigency, and the entire risk of non-payment, upon the hospital; unless there is reason to believe the hospital had been recalcitrant in investigating the claim of indigency, then, after presentation of some proof of indigency (not necessarily a *prima facie* showing) by the hospital, the claim had to be paid — this, assuming proof that the care was actually given, that it was necessary, and that the charges rendered therefor were reasonable. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

#### **Expert Testimony.**

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the

necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

#### **Failure to Investigate.**

Where an investigation by the county would have been superfluous, since the hospital's own evidence rebutted its argument of timeliness, and no harm to the applicant resulted from the county's failure to investigate, the application would not be deemed approved because the county denied it without conducting an independent investigation. *University of Utah Hosp. v. Board of County Comm'rs*, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

#### **Proper Party to Appeal.**

Applicant for medical assistance and the pursuing party must have an identity of interest; such an interest existed where the application concerned only the bill from a health care corporation although there were substantial other medical bills outstanding, and the application was made at the instance of the corporation on a form provided by them with their assistance; therefore, the corporation had the right to pursue the application to the extent allowed by statute, and thus, the company could be considered an "applicant" and was a proper party to bring appeal of board's denial of application. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), *rev'd on other grounds*, 109 Idaho 299, 707 P.2d 410 (1985).

**31-3505B. Approval.** — The board shall approve an application for assistance if it determines that necessary medical services have been or will be provided to a medically indigent person in accordance with this chapter; provided, the amount paid by the county for any medically indigent resident shall not exceed in aggregate the sum of ten thousand dollars (\$10,000) per applicant for any consecutive twelve (12) month period. [I.C., § 31-3505B, as added by 1996, ch. 410, § 10, p. 1357.]

### **JUDICIAL DECISIONS**

#### **Timeliness of Application.**

Where the patient clearly was in need of treatment for a psychotic condition that had never been diagnosed and had never been treated before, her situation was an emergency condition; therefore, her application

filed on the date of her discharge from the hospital was filed within the statutory parameters. *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000).

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Emergency treatment.  
Prima facie showing.  
Proving indigency.  
Real party in interest.

**Emergency Treatment.**

If a hospital gave emergency treatment to an indigent in an emergency situation without the county board of commissioner's prior approval, as the hospital was allowed to do under former law concerning allowance of approved claims only, then the hospital must have used diligence in gathering all reasonably available information relevant to the indigency of the patient, and the hospital should have done so as soon after the admission of the patient as was possible. The county, however, could not place the entire burden of proving indigency, and the entire risk of non-payment, upon the hospital; unless there was reason to believe the hospital had been recalcitrant in investigating the claim of indigency, then, after presentation of some proof of indigency (not necessarily a prima facie showing) by the hospital, the claim have been paid — this, assuming proof that the care was actually given, then it was necessary, and that the charges rendered therefor were reasonable. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

**Prima Facie Showing.**

Where neither parent can be found and the claimant hospital has made reasonable effort to ascertain the child's indigency, the hospital will be held to have made a prima facie showing of medical indigency, and the burden of proof on the question of indigency will then shift to the county. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v.*

*Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

Where the evidence established that the family's income was \$400 monthly, that the family has five children, that their assets consisted of a car valued at \$300 and a black and white television, and that they had no insurance, a prima facie case of medical indigency was established. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

**Proving Indigency.**

Under Idaho's medical indigency statutes, the applicant bears the burden of proving medical indigency. However, this duty is not absolute. The clerk of the board of county commissioners has a reciprocal duty to make reasonable inquiry into the grounds for the application. *Salinas v. Canyon County*, 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

**Real Party in Interest.**

The hospital is a real party in interest, entitled to make an application for medical indigency benefits on behalf of the person to whom emergency medical services were provided, entitled to pursue the denial of such benefits by appeal, and entitled to the receipt of the county's payment; thus, in view of the fact that the hospital possessed a right to pursue the claim for medical indigency benefits independent of that of claimant, it was not prejudiced by the fact that its claim was inventoried on claimant's petition in bankruptcy. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

**31-3505C. Initial decision by the board.** — The board shall make an initial determination on an application within fifteen (15) days from receipt of the clerk's statement and within five (5) days from receiving the clerk's statement on a request. The initial determination shall be mailed to the applicant or the third party making application on behalf of the applicant, as the case may be, and each provider listed on the application within five (5) days of the initial determination. [I.C., § 31-3505C, as added by 1996, ch. 410, § 11, p. 1357.]

## JUDICIAL DECISIONS

### Actions Constituting Denial.

While a medical center claimed that the board of county commissioners did not act on the center's application for county assistance, the board's action in refusing to process the application was sufficient to constitute a denial of the application, and this handling of the claim by the board was within the 15-day

requirement of this section; because the board did not fail to act on the application altogether, the trial court was not required to deem the application approved in accordance with § 31-3511(4). *Sacred Heart Med. Ctr. v. Boundary County*, 138 Idaho 534, 66 P.3d 238 (2003).

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Automatic approval.

County response.

Denial.

Timely application.

### Automatic Approval.

A medical indigency application submitted to a board of county commissioners, and neither approved nor denied in writing by the commissioners within 60 days, is automatically approved. *St. Luke's Regional Medical Ctr., Ltd. v. Gem County*, 107 Idaho 998, 695 P.2d 383 (1985).

When an application is not timely denied, its factual averments will be deemed true and the applicant will be entitled to such payments as the medical indigency statutes provide in relation to the facts averred; the applicant has no obligation to reestablish the factual prerequisites to payment at a subsequent administrative hearing occasioned by the county's tardy denial of the application. *Hardcastle v. Board of Comm'rs*, 110 Idaho 956, 719 P.2d 1216 (Ct. App. 1986).

Where a medical indigency application is deemed approved pursuant to this section, the county should be held liable for payment from the date the application was received by the county. *Hardcastle v. Board of Comm'rs*, 110 Idaho 956, 719 P.2d 1216 (Ct. App. 1986).

Where the letter sent by the county to the nursing home was merely a request for additional information, not a denial of the patient's application, the district court correctly determined that the county failed to timely deny the nursing home patient's application for indigent benefits to pay for medications not reimbursed by state medicaid, resulting in its deemed approval under this section. *Hardcastle v. Board of Comm'rs*, 110 Idaho 956, 719 P.2d 1216 (Ct. App. 1986).

If the county fails to notify the applicant in writing of its decision within 60 days from the receipt of the application, the application is automatically deemed approved. *University of Utah Hosp. v. Ada County*, 111 Idaho 1023, 729 P.2d 1086 (Ct. App. 1986).

### County Response.

An application for county medical assistance was "deemed approved" when the county failed to respond to it in a timely manner. *Ottesen ex rel. Edwards v. Board of Comm'rs*, 107 Idaho 1099, 695 P.2d 1238 (1985).

Former section required the board of county commissioners, within 60 days from receipt of a medical indigency application, to notify the applicant in writing of the action taken on his application; absent such written notice, the application was deemed approved. Thus, where the commissioners did not notify the hospital in writing of their action, rather, they orally informed the hospital that the claim was denied, the application — if in fact a proper application was made in writing — had to be deemed approved. *St. Benedict's Hosp. v. County of Twin Falls*, 107 Idaho 143, 686 P.2d 88 (Ct. App. 1984).

### Denial.

Mailing a denial notice within the 60-day limit prescribed under this section precludes the applicant from claiming that the application is deemed approved. *University of Utah Hosp. v. Elmore County*, 115 Idaho 132, 765 P.2d 157 (Ct. App. 1988).

### Timely Application.

The time requirements upon the applicant and the county under former section regarding application for county aid and this section are strictly enforced. *University of Utah Hosp. v. Ada County*, 111 Idaho 1023, 729 P.2d 1086 (Ct. App. 1986).

The mailing of notice within the 60-day period satisfies the time requirement for giving notice under this section, even if the notice is not received until after that period has expired. *University of Utah Hosp. v. Twin Falls County*, 113 Idaho 447, 745 P.2d 1068 (Ct. App. 1987).



An untimely application to the county for reimbursement concerning the care furnished to a medically indigent person is not necessarily invalid, as the issue of prejudice to the county resulting from a lack of notice is one which should be inquired into prior to approv-

ing or denying an application for indigent medical emergency assistance. *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989).

**31-3505D. Appeal of initial determination.** — An applicant or provider may appeal an adverse initial determination of the board by filing a written notice of appeal with the board within twenty-eight (28) days of the date of the initial determination. If no appeal is filed within the time allowed, the determination of the board shall become final. [I.C., § 31-3505D, as added by 1996, ch. 410, § 12, p. 1357.]

JUDICIAL DECISIONS

**Notice.**

Nothing in the record contradicted the certification that denial was mailed to the hospital; the actions taken by the hospital subsequent to their denial of their application for reimbursement indicated that the hospital received the denial and responded by seeking

Medicaid reimbursement, such that the hospital's claim that it was not served notice was without merit, and the county complied with its statutory obligations. *IHC Hosps., Inc. v. Teton County*, 139 Idaho 188, 75 P.3d 1198 (2003).

**31-3505E. Hearing on appeal of initial determination.** — The board shall hold a hearing on the appeal within seventy-five (75) days of receipt of the notice of appeal. The hearing may be continued by the board for not more than forty-five (45) days from the date of the hearing to allow the applicant to produce additional information, documents, records, testimony or other evidence required in the discretion of the board or to allow a decision on eligibility of the applicant for benefits to be reached by another agency such as, but not limited to, the social security administration or the state of Idaho department of health and welfare. The hearing may be continued for additional periods by mutual stipulation of the board and the applicant. The board shall make a final determination within thirty (30) days of the conclusion of the hearing. The final determination of the board shall be mailed to the applicant, or the third party making application on behalf of an applicant, as the case may be and each provider listed on the application, within five (5) days of the date of the final determination. [I.C., § 31-3505E, as added by 1996, ch. 410, § 13, p. 1357.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Administrative agency.  
Expert testimony.  
Request for hearing.

**Administrative Agency.**

Since the board of county commissioners is treated as an administrative agency for purposes of judicial review it should be treated in

the same manner for hearings under this section. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other

grounds, 109 Idaho 299, 707 P.2d 410 (1985).

**Expert Testimony.**

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

**Request for Hearing.**

Although the legislature clearly provided that a petition for judicial review to the district court must be filed within 30 days after

an administrative agency's final decision, both the Administrative Procedure Act (§ 67-5201 et seq.) and the Medical Indigency Act make no provision as to the time within which a hospital, health care provider or applicant for assistance must request a hearing before the board of commissioners after its application for medical indigency assistance has been denied. In the absence of a county ordinance adopting the guidelines, or any guidance or direction from the legislature as to the time within which a request for hearing must be made after denial of the application, the legislature did not intend to set a specific time limit within which a request for hearing must be made. *University of Utah Hosp. v. Minidoka County*, 120 Idaho 91, 813 P.2d 902 (1991).

**31-3505F. Arbitration.** — In the event that a county determines that a service is not a necessary medical service, a provider may submit the issue to a panel for arbitration as follows:

(1) Within thirty (30) days of the determination, the board and the provider shall each appoint one (1) licensed medical or osteopathic doctor with expertise in the condition treated or to be treated. The two (2) appointees shall jointly select a third medical or osteopathic licensed doctor with equivalent expertise. The panel shall review such information as it deems necessary and render a decision within thirty (30) days as to whether the covered service is a necessary medical service.

(2) There shall be no judicial or other review or appeal of the findings of the panel. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time that such a claim is pending before the panel and for thirty (30) days thereafter.

(3) Expenses incurred by the members of the panel in the performance of their duties will be borne by the respective parties making their appointment, and expenses of the third member shall be divided equally among the respective parties. [I.C., § 31-3505F, as added by 1996, ch. 410, § 14, p. 1357.]

**31-3505G. Petition for judicial review of final determination.** — If, after a hearing as provided in section 31-3505E, Idaho Code, the final determination of the board is to deny an application for financial assistance with necessary medical services, the applicant, or a third party making application on an applicant's behalf, may seek judicial review of the final determination of the board in the manner provided in section 31-1506, Idaho Code. [I.C., § 31-3505G, as added by 1996, ch. 410, § 15, p. 1357.]

## JUDICIAL DECISIONS

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Appeal.

Applicant.

Termination of aid.

**Appeal.**

The trial court's denial of mandamus relief to a hospital which sought to require the county to pay for hospital services furnished to allegedly indigent minors was proper in view of the hospital's adequate remedy available by appealing the refusal of the county clerk to issue certificates approving payment for such services. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 98 Idaho 876, 574 P.2d 1354 (1978).

Action by a county upon a medical indigency application is reviewable under the Administrative Procedure Act (APA) (through § 31-1506); the APA provides that review must be sought by a petition filed in the district court. However, where administrative action reviewable under the APA is challenged by complaint rather than by a petition for judicial review, the proper court response is not to dismiss the complaint but to treat it as a petition governed by the APA. *St. Benedict's Hosp. v. County of Twin Falls*, 107 Idaho 143, 686 P.2d 88 (Ct. App. 1984).

Where the hospital failed to demand a hearing before the board of county commissioners after denial of medical assistance benefits by county commissioners, it provided the district court and this appellate court no record for review. *University of Utah Hosp. v. Minidoka County*, 115 Idaho 406, 767 P.2d 249 (1987).

Under Idaho's Administrative Procedure Act, which is made applicable to indigent medical claims by this section, when an appeal of an administrative ruling is brought to a district court and the findings of fact to be

reviewed are missing or inadequate the district court should remand the case to the board of county commissioners. *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988).

**Applicant.**

Applicant for medical assistance and the pursuing party must have an identity of interest; such an interest existed where the application concerned only the bill from a health care corporation although there were substantial other medical bills outstanding, and the application was made at the instance of the corporation on a form provided by them with their assistance; therefore, the corporation had the right to pursue the application to the extent allowed by statute, and thus, the company could be considered an "applicant" and was a proper party to bring appeal of board's denial of application. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984).

**Termination of Aid.**

Indigent claimants who were notified by the county commissioners that their county aid had been terminated were not required to exhaust the administrative remedy contained in this section as a jurisdictional prerequisite to maintaining their court action against the commissioners, because the administrative remedy pertains to the denial of an individual's application for indigency aid, not to the termination of such aid. *Harris v. Cassia County*, 106 Idaho 513, 681 P.2d 988 (1984).

**31-3506. Obligated county.** — The county obligated for payment shall be determined as follows:

(1) The obligated county for payment of pharmaceuticals for noninstitutionalized individuals shall be the county where the applicant currently resides.

(2) The obligated county for payment of necessary medical services for medical indigent individuals shall be as follows:

(a) The last county in which the applicant or head of household has maintained a residence for six (6) consecutive months or longer within the past five (5) years preceding application shall be obligated. If the applicant or head of household maintains another residence in a different county or state for purposes of employment, the county where the family



residence is maintained shall be deemed the applicant's or head of household's place of residence.

(b) If an individual has not resided in any county for a period of six (6) months within the five (5) years preceding incurrence of medical costs for which counties have a responsibility in whole or in part, then the county where the applicant maintained a residence for at least thirty (30) days immediately preceding such incurrence shall be the obligated county.

(c) Active military duty, or being admitted as a patient in a hospital, nursing home, other medical facility or institution, shall not change the obligated county. The county obligated shall remain the same county that would have been obligated prior to institutionalization as above described.

(d) For full-time students at public institutions of higher learning, the obligated county shall be the county of residence of the applicant unless an obligated person, for whom the applicant is claimed as a dependent, resides in another county or state.

(e) If an individual has not resided in any county for a consecutive period of thirty (30) days but has resided in the state of Idaho for a consecutive period of thirty (30) days then the county where the individual last resided prior to receiving medical services shall be the obligated county. [I.C., § 31-3506, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 9, p. 462; am. 1988, ch. 332, § 3, p. 994; am. 1989, ch. 193, § 3, p. 475; am. 1996, ch. 410, § 16, p. 1357; am. 2000, ch. 317, § 4, p. 1067.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that the repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

#### JUDICIAL DECISIONS

##### **Residence.**

Residency requires physical presence coupled with an intent to remain, or an absence of intent to move elsewhere. *Cartwright v. Gem County*, 108 Idaho 160, 697 P.2d 1174 (1985).

The words "resident" and "residence" should be given their ordinary and common meaning. *Intermountain Health Care, Inc. v. Board of Comm'rs*, 109 Idaho 412, 707 P.2d 1051 (1985).

The last two sentences of this section, as it read prior to the 1988 amendment, "A husband's place of residence shall be deemed the place of residence of his wife and children, unless the husband's residence is out of state in which case the place of residence of the wife in Idaho shall control. If a man maintains a family residence in one county and maintains another residence in a different county for purposes of employment the county which the family residence is maintained shall be

deemed the man's place of residency." applied only to those circumstances where a husband and wife did not reside together. *Intermountain Health Care, Inc. v. Board of Comm'rs*, 109 Idaho 412, 707 P.2d 1051 (1985).

The meaning of the former first sentence of this section "Payment for hospitalization of a medically indigent individual shall be provided by the county in which such individual maintained a residence immediately preceding hospitalization or institutionalization." as it read prior to the 1988 amendment was clear on its face; a medically indigent person's residence at the time of hospitalization should be used to determine the county liable for payment of that person's hospitalization costs. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 685, 710 P.2d 595 (1985).

In amending the former first sentence of this section in 1976, "Payment for hospitalization of a medically indigent individual

shall be provided by the county in which such individual last resided for a period of six months during five years preceding hospitalization." by deleting the words, "last resided for a period of six months during the five years" following "which such individual" and adding "maintained a residence immediately" preceding the word, "preceding" and adding "or institutionalization" at the end of the sentence, the legislature intended that the liable county be determined on the basis of residency immediately preceding hospitalization, rather than where the medically indigent person last resided for a period of six months. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 685, 710 P.2d 595 (1985).

The county is not relieved of its financial obligations to a medically indigent person injured while within the territorial limits of

the county merely because such person was not a resident of the county or the state of Idaho when the injuries were suffered and did not subsequently become such a resident. *East Shoshone Hosp. Dist. v. Nonini*, 109 Idaho 937, 712 P.2d 638 (1985).

County in which indigent patient's family was living at the time the need for emergency medical care arose was ruled the obligatory county for purposes of paying the patient's medical bills, even though the patient's family intended to return to the county in which they had previously lived, and in fact did so shortly after the hospitalization. *IHC Hosps. v. Board of Comm'rs*, 117 Idaho 207, 786 P.2d 600 (Ct. App. 1990).

**Cited in:** *East Shoshone Hosp. Dist. v. Nonini*, 109 Idaho 937, 712 P.2d 638 (1985); *Shobe v. Ada County*, 130 Idaho 580, 944 P.2d 715 (1997).

**31-3507. Notice of Admission and transfer of a medically indigent patient.** — (1) A hospital shall notify the clerk of the county or counties responsible within one (1) working day of identifying a patient as potentially medically indigent. The notice of admission shall include the following if available:

- (a) Name, address, telephone number, date of birth, social security number and date of admission of the patient;
- (b) Name, address and telephone number of responsible party;
- (c) Name of attending physician;
- (d) Diagnosis and/or reason for admission;
- (e) Name, address and telephone number of the person completing the notice of admission.

(2) A county or administrator shall have the right to have an approved medically indigent person transferred to a hospital or facility, in accordance with requirements of the federal emergency medical treatment and active labor act, 42 U.S.C., section 1395d.d.; provided however, treatment for the necessary medical service must be available at the designated facility, and the county contract physician, or the attending physician if no county contract physician is available, must certify that the transfer of such person would not present a significant risk of further injury. The county, the administrator, and hospital from which or to which a person is taken or removed as herein provided, as well as the attending physician(s), shall not be liable in any manner whatsoever and shall be immune from suit for any causes of action arising from a transfer performed in accordance with this section. The immunities and freedom from liability granted pursuant to this section shall extend to any person, firm or corporation acting in accordance with this section. [I.C., § 31-3507, as added by 1996, ch. 410 § 17, p. 1357.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 31-3507, which comprised I.C., § 31-3507, as added by 1974, ch. 302, § 12, p. 1769, was repealed by S.L. 1996, ch. 410, § 1, effective July 1, 1996.

**31-3508. Amount of aid for necessary medical services.** — The county responsible for payment of necessary medical services of a medically indigent person shall pay an amount not to exceed the reimbursement rates to the provider rendering such services. The bill submitted for payment pursuant to section 31-3519, Idaho Code, shall show the total provider charges less any amounts which have been received under any other federal or state law. Bills of less than twenty-five dollars (\$25.00) shall not be presented for payment. [I.C., § 31-3508, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 10, p. 462; am. 1983, ch. 215, § 3, p. 594; am. 1996, ch. 410, § 18, p. 1357.]

## STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

## JUDICIAL DECISIONS

### ANALYSIS

Available resources.

Burden of proof.

—Emergency treatment.

Constitutionality.

Liability of county.

Out-of-state hospitals.

Payments from governmental programs.

Purpose.

Real party in interest.

Reimbursement.

### Available Resources.

A hospital's uncompensated services obligation under the federal Hill-Burton Act (42 U.S.C. § 291 et seq.) was not a resource available under § 31-3502(1) which would preclude applicants from obtaining county medical assistance if they were otherwise qualified to receive it. *Braun v. Ada County*, 102 Idaho 901, 643 P.2d 1071 (1982).

### Burden of Proof.

#### —Emergency Treatment.

If a hospital gives emergency treatment to an indigent in an emergency situation without the county board of commissioners' prior approval, as the hospital is allowed to do under former law concerning approval of claims, then the hospital must use diligence in gathering all reasonably available information relevant to the indigency of the patient, and the hospital should do so as soon after the admission of the patient as is possible. The county, however, cannot place the entire burden of proving indigency, and the entire risk of non-payment, upon the hospital; unless

there is reason to believe the hospital has been recalcitrant in investigating the claim of indigency, then, after the presentation of some proof of indigency (not necessarily a prima facie showing) by the hospital, the claim must be paid — This, assuming proof that the care was actually given, that it was necessary, and that the charges rendered therefor were reasonable. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).



**Constitutionality.**

Former sections 31-3401 — 31-3410 and §§ 31-3501 — 31-3516, were not unconstitutional under Const., Art. 8, § 4 and Art. 12, § 4, because those constitutional provisions were adopted only to prevent private interests from gaining advantage at the expense of the taxpayer and were not intended to prohibit counties from giving aid to indigents; since the fund remains within the effective control of the municipality, it is apparent that the evils sought to be prevented by those constitutional provisions do not exist. *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

**Liability of County.**

Where the patient's medical expenses were about \$35,000, and the insurer paid about \$26,000 to the hospital, leaving an unpaid balance of about \$9,000, the county was only obligated to pay the difference between the reimbursement rate (defined by subdivision (5) of § 31-3502 and stipulated to be 78%) and the amount paid by other sources, or about \$1,500, not the balance of the total charges after the amount received by other sources was deducted, up to the reimbursement rate, or about \$9,000. *University of Utah Hosp. v. Jefferson County*, 111 Idaho 1, 720 P.2d 184 (1986).

**Out-of-State Hospitals.**

When the definition of hospital is analyzed contextually in the statutes, it is clear that the meaning is not confined to those medical institutions within the state. *University of Utah Hosp. & Medical Ctr. v. Bethke*, 101 Idaho 245, 611 P.2d 1030 (1980).

**Payments from Governmental Programs.**

This section clearly anticipates the actual receipt by the hospital of funds under other governmental programs for services rendered to indigents before the county's obligation for payment will be reduced. *Braun v. Ada*

*County*, 102 Idaho 901, 643 P.2d 1071 (1982).

**Purpose.**

The underlying purpose of this section is to prevent the processing of bills where the administrative expense is excessive in relation to the amount of assistance sought; therefore, this section permits indigent persons or their health care providers to accumulate bills and to submit them when the aggregate sum exceeds \$25.00. *Hardcastle v. Board of Comm'rs*, 110 Idaho 956, 719 P.2d 1216 (Ct. App. 1986).

**Real Party in Interest.**

The hospital is a real party in interest, entitled to make an application for medical indigency benefits on behalf of the person to whom emergency medical services were provided, entitled to pursue the denial of such benefits by appeal, and entitled to the receipt of the county's payment; thus, in view of the fact that the hospital possessed a right to pursue the claim for medical indigency benefits independent of that of claimant, it was not prejudiced by the fact that its claim was inventoried on claimant's petition in bankruptcy. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984).

**Reimbursement.**

Since § 31-3509 imposes simply the duty on hospitals to determine liability for the account so incurred, they are not required to execute on assets of applicant before submitting bill to the county; thus, the county is liable to the hospital for the entire bill and has the corresponding right to seek reimbursement from the applicant to the extent permitted by statute. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), *rev'd* on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

**Cited in:** *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985); *University of Utah Hosp. v. Ada County*, 111 Idaho 1023, 729 P.2d 1086 (Ct. App. 1986).

**31-3509. Collections by providers.** — Providers making claims for necessary medical services of medically indigent persons shall make all reasonable efforts to determine liability for the account so incurred from any available insurance or other sources available for payment of such expenses prior to submitting the bill to the county for payment. In the event that a provider has been notified that an individual qualifies for approval of benefits, such provider(s) shall submit a bill to third party insurance, medicaid, medicare, crime victims compensation and/or worker's compensation for payment within thirty (30) days of such notice. In the event any payments are thereafter received for charges which have been paid by a county and/or the administrator pursuant to the provisions of this chapter, said sums up to the amount actually paid by the county and/or the

administrator shall be paid over to such county and/or administrator within sixty (60) days of receiving such payment from other resources. [I.C., § 31-3509, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 11, p. 462; am. 1992, ch. 83, § 5, p. 256; am. 1996, ch. 410, § 19, p. 1357; am. 2000, ch. 317, § 5, p. 1067.]

## STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

## JUDICIAL DECISIONS

### ANALYSIS

Available resources.

Liability.

— Determination.

— County.

### Available Resources.

A hospital's uncompensated services obligation under the federal Hill-Burton Act (42 U.S.C. § 291 et seq.), was not a resource available under § 31-3502(1) which would preclude applicants from obtaining county medical assistance if they were otherwise qualified to receive it. *Braun v. Ada County*, 102 Idaho 901, 643 P.2d 1071 (1982).

### Liability.

#### — Determination. •

Since this section imposes simply the duty on hospitals to determine liability for the account so incurred, they are not required to execute on assets of applicant before submitting bill to the county; thus, the county is liable to the hospital for the entire bill and has the corresponding right to seek reimbursement from the applicant to the extent permitted by statute. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

If a hospital gives emergency treatment to an indigent in an emergency situation without the county board of commissioners' prior approval, as the hospital is allowed to do under former law concerning approval of claims, then the hospital must use diligence in gathering all reasonably available information relevant to the indigency of the patient, and the hospital should do so as soon after the admission of the patient as is possible. The county, however, cannot place the entire burden of proving indigency, and the entire risk

of non-payment, upon the hospital; unless there is reason to believe the hospital has been recalcitrant in investigating the claim of indigency, then, after the presentation of some proof of indigency (not necessarily a prima facie showing) by the hospital, the claim must be paid — This, assuming proof that the care was actually given, that it was necessary, and that the charges rendered therefor were reasonable. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled in part, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

The 1976 amendment to this section was a conscious action by the legislature to relieve hospitals of the duty to collect on an account, and instead impose a duty to "determine liability." *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985).

#### — County.

Where the patient's medical expenses were about \$35,000, and the insurer paid about \$26,000 to the hospital, leaving an unpaid balance of about \$9,000, the county was only obligated to pay the difference between the reimbursement rate (defined by subdivision (5) of § 31-3502 and stipulated to be 78%) and the amount paid by other sources, or about \$1,500, not the balance of the total charges after the amount received by other sources was deducted, up to the reimbursement rate, or about \$9,000. *University of Utah Hosp. v. Jefferson County*, 111 Idaho 1, 720 P.2d 184 (1986).

**Cited in:** Idaho Falls Consol. Hosps. v.

Bingham County Bd. of County Comm'rs, 102 Idaho 838, 642 P.2d 553 (1982); Caldwell Mem. Hosp. v. Board of County Comm'rs, 107

Idaho 33, 684 P.2d 1010 (Ct. App. 1984); Carpenter v. Twin Falls County, 107 Idaho 575, 691 P.2d 1190 (1984).

**31-3510. Right of subrogation.** — Upon payment of a claim for necessary medical services pursuant to this chapter, the county and the catastrophic health care costs program making such payment shall become subrogated to all the rights of the hospital and other providers and to all rights of the medically indigent person against any third parties who may be the cause of or liable for such necessary medical services. [I.C., § 31-3510, as added by 1974, ch. 302, § 12, p. 1769; am. 1996, ch. 410, § 20, p. 1357.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

#### JUDICIAL DECISIONS

##### **Liability of County.**

Where the patient's medical expenses were about \$35,000, and the insurer paid about \$26,000 to the hospital, leaving an unpaid balance of about \$9,000, the county was only obligated to pay the difference between the reimbursement rate (defined by subdivision (5) of § 31-3502 and stipulated to be 78%) and the amount paid by other sources, or about \$1,500, not the balance of the total charges after the amount received by other sources was deducted, up to the reimbursement rate, or about \$9,000. *University of Utah Hosp. v.*

*Jefferson County*, 111 Idaho 1, 720 P.2d 184 (1986).

**Cited in:** *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982); *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985); *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985); *University of Utah Hosp. v. Board of County Comm'rs*, 121 Idaho 340, 824 P.2d 915 (Ct. App. 1992).

**31-3510A. Reimbursement.** — (1) Receipt of financial assistance pursuant to this chapter shall obligate an applicant to reimburse the county from which assistance is received and the catastrophic health care costs program for such reasonable portion of the financial assistance paid on behalf of the applicant as the board may determine that the applicant is able to pay from resources over a reasonable period of time. Cash amounts received shall be prorated between the county and the state in proportion to the amount each has paid.

(2) A final determination shall not relieve the applicant's duty to make additional reimbursement from resources if the board subsequently finds within a reasonable period of time that there has been a substantial change in circumstances such that the applicant is able to pay additional amounts up to the total claim paid on behalf of the applicant.

(3) A final determination shall not prohibit the board from reviewing a petition from an applicant to reduce an order of reimbursement based on a substantial change in circumstances.



(4) The automatic lien created pursuant to the chapter may be filed and recorded in any county of this state wherein the applicant has resources and may be liquidated or unliquidated in amount. Nothing herein shall prohibit an applicant from executing a consensual lien in addition to the automatic lien created by filing an application pursuant to this chapter. In the event that resources can be located in another state, the clerk may file the lien with the district court and provide notice to the recipient. The recipient shall have twenty (20) days to object, following which the district court shall enter judgment against the recipient. The judgment entered may thereafter be filed as provided for the filing of a foreign judgment in that jurisdiction.

(5) The county shall have the same right of recovery as provided to the state of Idaho pursuant to sections 56-218 and 56-218A, Idaho Code.

(6) The board may require the employment of such of the medically indigent as are capable and able to work and whose attending physician certifies they are capable of working.

(7) Moneys received by a county as reimbursement shall be credited to the county indigent fund and need not be budgeted or appropriated in the manner required by chapter 16, title 31, Idaho Code, but shall be available for expenditure at any time for the purposes of the county indigent fund.

(8) If, after a hearing, the final determination of the board is to require a reimbursement amount or rate the applicant believes excessive, the applicant may seek judicial review of the final determination of the board in the manner provided in section 31-1506, Idaho Code. [I.C., § 31-3510A, as added by 1983, ch. 215, § 4, p. 594; am. 1996, ch. 410, § 21, p. 1357.]

### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

### JUDICIAL DECISIONS

#### **Determination of Liability.**

Since § 31-3509 imposes simply the duty on hospitals to determine liability for the account so incurred, they are not required to execute on assets of applicant before submitting bill to the county; thus, the county is liable to the hospital for the entire bill and has the corresponding right to seek reimbursement from the applicant to the extent

permitted by statute. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

**Cited in:** *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 109 Idaho 299, 707 P.2d 410 (1985).

### DECISIONS UNDER PRIOR LAW

#### **Powers of Commission.**

The county commission is a fact finding body, and if it has the power to determine whether the applicant is indigent, it should

also be given wide latitude to determine the recipient's reimbursement obligation; thus, the commissioners had inherent power to consider the question of reimbursement. In-

termountain Health Care, Inc. v. Board of County Comm'rs, 108 Idaho 757, 702 P.2d 795 (1985).

**31-3511. Violations and penalties.** — (1) Any applicant or obligated person who wilfully gives false or misleading information to a hospital, a county or an agent thereof, or to any individual in order to obtain necessary medical services as or for a medically indigent person, or any person who obtains necessary medical services as a medically indigent person who fails to disclose insurance, worker's compensation, resources, or other benefits available to him as payment or reimbursement of such expenses incurred, shall be guilty of a misdemeanor and punishable under the general provisions for punishment of a misdemeanor. In addition, any applicant who fails to cooperate with a county or makes a material misstatement or material omission to a county in an application pursuant to this chapter shall be ineligible for nonemergency assistance under this chapter for a period of two (2) years.

(2) The board shall not have jurisdiction to hear and shall not approve an application for necessary medical services unless an application in the form prescribed by this chapter is received by the clerk in accordance with the provisions of this chapter.

(3) The board may deny an application if material information required in the application or request is not provided by the applicant or a third party or if the applicant has divested himself or herself of resources within one (1) year prior to filing an application in order to become eligible for assistance pursuant to this chapter. An applicant who is sanctioned by federal or state authorities and loses medical benefits as a result of failing to cooperate with the respective agency or making a material misstatement or material omission to the respective agency shall be ineligible for assistance pursuant to this chapter for the period of such sanction.

(4) If the board fails to act upon an application within the time lines required under this chapter, the application shall be deemed approved and payment made as provided in this chapter.

(5) An applicant may appeal a decision rendered by the board pursuant to this section in the manner provided in section 31-1506, Idaho Code. [I.C., § 31-3511, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 12, p. 462; am. 1996, ch. 410, § 22, p. 1357.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19(1) of said ch. 233 declared an emergency and provided that such repeal should take

effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

## JUDICIAL DECISIONS

**Actions Constituting Denial.**

While a medical center claimed that the board of county commissioners did not act on the center's application for county assistance, the board's action in refusing to process the application was sufficient to constitute a denial of the application, and this handling of the claim by the board was within the 15-day requirement of § 31-3505C; because the board did not fail to act on the application altogether, the trial court was not required to

deem the application approved in accordance with § 31-3511(4). *Sacred Heart Med. Ctr. v. Boundary County*, 138 Idaho 534, 66 P.3d 238 (2003).

**Cited in:** *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982); *Sacred Heart Med. Ctr. v. Nez Perce County*, 136 Idaho 448, 35 P.3d 265 (2001); *IHC Hosps., Inc. v. Teton County*, 139 Idaho 188, 75 P.3d 1198 (2003).

**31-3512. Joint county hospitals.** — Recognizing the need of hospitals for the public welfare and the burden for one county to finance the cost of such construction, operation and maintenance thereof within its own boundaries under certain circumstances, the boards of county commissioners in their respective counties shall have the power to jointly and severally enter into contracts or agreements with one (1) or more adjoining counties to construct, operate and maintain joint county hospitals, either within or without the boundaries of such counties, upon a finding of each such board that there is a public necessity requiring the financing of such hospital facilities jointly with one (1) or more adjoining counties. The boards of county commissioners shall have the same powers to operate, finance and bond for such joint county hospitals as they would have for a county hospital. [I.C., § 31-3512, as added by 1974, ch. 302, § 12, p. 1769.]

## STATUTORY NOTES

**Cross References.** — Agreements with other public agencies for joint action, §§ 67-2326 — 67-2333. •

Health facilities, joint establishment and operation with other public agencies, § 39-1416.

**31-3513. Election for issuance of bonds.** — The county commissioners may, when they deem the welfare of their counties require it, or when petitioned thereto by a number of resident taxpayers of their respective counties equal to five percent (5%) of the number of persons voting for the secretary of state of the state of Idaho, at the election next preceding the date of such petition, submit to the qualified electors of said county at any election held as provided in section 34-106, Idaho Code, the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing such hospital, hospital grounds, nurses' homes, nursing homes, residential or assisted living facilities, shelter care facilities, medical clinics, superintendent's quarters, or any other necessary buildings, and equipment, and may on their own initiative submit to the qualified electors of the county at any general election the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing for the extension and enlargement of existing hospital, hospital grounds, nurses' homes, nursing homes, residential or assisted living facilities, shelter care facilities, medical clinics or grounds,



superintendent's quarters, or any other necessary buildings, and equipment, and when authorized thereto by two-thirds ( $\frac{2}{3}$ ) vote at such election, shall issue and sell such coupon bonds and use the proceeds therefrom for the purposes authorized by such election. Said proposition may be submitted to the qualified electors at an election held subject to the provisions of section 34-106, Idaho Code, if the board of county commissioners shall by resolution so determine. No person shall be qualified to vote at any election held under the provisions of this section unless he shall possess all the qualifications required of electors under the general laws of this state.

The board shall be governed in calling and holding such election and in the issuance and sale of such bonds, and in the providing for the payment of the principal and interest thereon by the provisions of sections 31-1901 through 31-1909, Idaho Code, and by the provisions of chapter 2, title 57, Idaho Code; provided, however, that when such bonds have been issued and sold and a period of two (2) years or more has elapsed from the date of sale of said bonds and for any reason the proceeds from the sale of said bonds or other moneys appropriated for the purpose for which said bonds were issued, have not been used for the purpose for which they were appropriated or said bond issue made, the board may, with the written consent of all of the bondholders first having been obtained, submit to the qualified electors, as herein defined, the question of spending such moneys for a definite purpose. The purpose for which it is decided to spend such moneys shall be clearly and plainly stated on the ballot. If a majority of the qualified electors shall vote in favor of spending such moneys for the purpose stated, the board of county commissioners shall proceed in the same manner as if such different purpose had been the original purpose for such bond issue or appropriation. Provided, further that if less than a majority of the qualified electors shall vote in favor of spending such moneys for such different purpose, or if no such election should be had, when all of the bonds shall have been retired, such excess moneys shall be placed in the general fund. [I.C., § 31-3513, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 4, p. 410; am. 1989, ch. 193, § 4, p. 475; am. 1993, ch. 112, § 3, p. 283; am. 1995, ch. 118, § 33, p. 417; am. 2000, ch. 274, § 4, p. 799.]

## STATUTORY NOTES

**Compiler's Notes.** — Sections 31-1906 — 31-1901 — 31-1909" in the second paragraph, 31-1909, included in the reference to "sections were repealed by S.L. 1988, ch. 278, § 1.

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Complaint.  
Jurisdiction.  
Persons eligible to vote.  
Purpose of bond issue.

**Complaint.**

Where complaint against bond issue failed to allege that petition for special bond election had an insufficient number of resident taxpayer signers but alleged persons signing such petition were not qualified electors and taxpayers, such complaint was defective since the county commissioners were given the implied right to determine the sufficiency of the petition. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

In complaint filed by taxpayer to contest result of bond election for construction of hospital, word "taxpayer" in complaint included wife or husband of a taxpayer. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

**Jurisdiction.**

District court had jurisdiction of proceeding by taxpayer to contest result of election to determine whether county commissioners should issue bonds to build a hospital based

on contention that nontaxpayers were permitted to vote, regardless of whether suit was in equity or in law. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

**Persons Eligible to Vote.**

In special bond election held on June 8, 1950 for construction of hospital, restriction of voting to persons, whose names appeared on 1949 tax rolls was proper, since 1950 tax rolls had not been completed at the time of the election. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

**Purpose of Bond Issue.**

Only one "purpose," though including three units or structures, was in the call for the election on bond issue to provide hospital, hospital grounds, and other necessary buildings and equipment, consisting of main hospital in one place and two receiving hospitals at other places, thus complying with Const., art. 8, § 3. *Hubbard v. Board of Comm'rs*, 68 Idaho 141, 190 P.2d 685 (1948).

**31-3514. Internal management — Accounts and reports.** — Such facilities as referred to in section 31-3503(2), Idaho Code, may suitably provide for and accept other patients and must charge and accept payments from such other patients as are able to make payments for services rendered and care given. The board of county commissioners may make suitable rules and regulations for the management and operation of such property by a suitable board of control, or otherwise, or for carrying out such hospital uses and purposes under a lease of the same.

The boards or officers or lessees of such hospital property shall render accounts and reports to the county commissioners as may be required by the board; and shall render accounts and deliver over any and all moneys received by them for the county to the county treasurer to be credited to the operation expense of hospitals and indigent sick and otherwise dependent poor of the county in such manner as provided by law for the handling of funds of this kind.

Said board of control may permit persons from out of the county where such hospital is located to be admitted for hospitalization to such hospital. As to such cases special rates for the use and service of such hospital may be provided which rates shall apply equally to all such patients who do not pay taxes within the county where such hospital is located. The purpose of providing such special rates shall be to compel persons living out of the county where such hospital is located, and who receive hospitalization in such hospital, to bear a just burden of the cost of construction and maintenance of such hospital. [I.C., § 31-3514, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 5, p. 410; am. 1982, ch. 340, § 10, p. 851; am. 1989, ch. 193, § 5, p. 475; am. 1993, ch. 112, § 4, p. 283.]

## RESEARCH REFERENCES

**A.L.R.** — Right to maintain action under Hill-Burton Act (42 U.S.C. § 291 et seq.) to compel hospital to provide services to persons unable to pay therefor, 11 A.L.R. Fed. 683.

**31-3515. Lease or sale.** — Such counties acting through their boards of county commissioners shall have the right to lease such hospitals upon such terms and for such a length of time as they may decide, or to sell the same; provided, however, that no such lease or sale, except those leases entered into between such counties and the Idaho health facilities authority as provided in section 31-836, Idaho Code, shall be final or valid unless and until it has been approved by a majority of the qualified electors of said county voting on such question at an election held subject to the provisions of section 34-106, Idaho Code; except if a hospital district has been created under the provisions of chapter 13, title 39, Idaho Code, a board of county commissioners shall have the right to lease, as provided in section 31-836, Idaho Code, such hospitals within a created hospital district to the hospital district without submitting the question of lease or sale to the qualified electors of the county or the respective hospital district. [I.C., § 31-3515, as added by 1974, ch. 302, § 12, p. 1769; am. 1978, ch. 42, § 2, p. 75; am. 1980, ch. 57, § 1, p. 115; am. 1995, ch. 118, § 34, p. 417.]

## STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1978, March 3, 1978. Section 2 of S.L. 1980, ch. 57 declared an emergency. Approved March 10, 1980.

**31-3515A. Conveyance, lease of county hospital to nonprofit corporation.** — (1) As an alternative to the procedure set forth in section 31-3515, Idaho Code, counties acting through their respective boards of county commissioners may convey or lease county hospitals, and the equipment therein, subject to the following conditions:

- (a) The entity to which the hospital is to be transferred shall be a nonprofit corporation;
- (b) No lease term shall exceed ninety-nine (99) years. This subsection supersedes that part of section 31-836, Idaho Code, which is inconsistent herewith;
- (c) The governing body of the nonprofit corporation must be composed initially of the incumbent members of the board of hospital trustees, as individuals. The articles of incorporation must provide for a membership of the corporation which is:
  - (i) Broadly representative of the public and includes residents of each incorporated city in the county and of the unincorporated area of the county; or
  - (ii) A single nonprofit corporate member having articles of incorporation which provide for a membership of that corporation which is broadly representative of the public and includes residents of each incorporated city in the county and of the unincorporated area of the county.



The articles must further provide for the selection of the governing body by the membership of the corporation, or exclusively by a parent corporation which is the corporate member, with voting power, and not by the governing body itself, except to fill a vacancy for the unexpired term. The articles must further provide that no member of the governing body shall serve more than two (2) consecutive three (3) year terms.

(d) The nonprofit corporation must provide care for indigent patients, and receive any person falling sick or maimed within the county.

(e) The transfer agreement must provide for the transfer of patients, staff and employees, and for the continuing administration of any trusts or bequests or maintenance of records pertaining to the existing public hospital.

(f) The transfer or lease agreement shall provide for a transfer or lease price which shall be either of the following:

(i) The acceptance of all assets and assumption of all liabilities; or

(ii) Such other price as the commissioners and the nonprofit corporation may agree.

(2) If any hospital which has been conveyed pursuant to this section ceases to be used as a nonprofit hospital, unless the premises so conveyed are sold and the proceeds used to erect or enlarge another nonprofit hospital for the county, the hospital so conveyed reverts to the ownership of the county. If any hospital which has been leased pursuant to this section ceases to be used as a nonprofit hospital, the lease shall terminate.

(3) The provisions of section 31-808, Idaho Code, with respect to the sale and disposition of real and personal property owned by the county, shall not apply to transactions covered by section 31-3515, Idaho Code, and this section. [I.C., § 31-3515A, as added by 1986, ch. 240, § 1, p. 652.]

**31-3516. Separability.** — If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter, which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are declared to be severable. [I.C., § 31-3516, as added by 1974, ch. 302, § 12, p. 1769; am. 1996, ch. 410, § 23, p. 1357.]

**31-3517. Establishment of a catastrophic health care cost program.** — (1) The governing board of the catastrophic health care cost program created by the counties pursuant to a joint exercise of powers agreement, dated October 1, 1984, and serving on June 30, 1991, is hereby continued as such through December 31, 1992, to complete the affairs of the board, to continue to pay for those medical costs incurred by participating counties prior to October 1, 1991, until all costs are paid or the moneys in the catastrophic health care cost account contributed by participating counties are exhausted, and to pay the balance of such contributions back to the county of origin in the proportion contributed. County responsibility shall be limited to the first ten thousand dollars (\$10,000) per claim. The

remainder of the eligible costs of the claim shall be paid by the state catastrophic health care cost program.

(2) Commencing October 1, 1991, a catastrophic health care cost program board is hereby established, and the board shall be the administrator of the catastrophic health care cost program. This board shall consist of seven (7) members, with six (6) county commissioners, one (1) from each of the six (6) districts or regions established by the Idaho association of counties, and one (1) member appointed by the governor.

(a) The commissioner members shall be elected by the boards of county commissioners of the member counties of each district or region, with each board of county commissioners entitled to one (1) vote. The process and procedures for conducting the election and determining the members shall be determined by the board itself, except that the election must be conducted, completed and results certified by December 31 of each year in which an election for members is conducted. The board recognized in subsection (1) of this section shall authorize and conduct the election in 1991.

(b) The term of office of a member shall be two (2) years, commencing on January 1 next following election or appointment, except that for commissioner members elected in 1991, the commissioner members from districts or regions 1, 3 and 5 shall serve for a term of one (1) year, and the commissioner members from districts or regions 2, 4 and 6 shall serve for a term of two (2) years. Members may be reelected or reappointed. Election or appointment to fill vacancies shall be for the balance of the unexpired term.

(c) Members shall be compensated as provided in section 59-509(b), Idaho Code, from the catastrophic health care cost account.

(d) At the first meeting of the board in January of each year, the board shall organize by electing a chair, a vice-chair, and such other officers as desired.

(3) The administrator is authorized to contract with a health insurance company, group health services organization or other provider of third party payment for health services authorized to do business in this state, or to establish a self-insurance fund in order to implement a catastrophic health care costs program.

The contract shall provide that the health insurance company, group health service organization or other third party payer, shall, for consideration, which shall be set by the administrator, assume the risk of providing for recipients under the catastrophic health care cost provisions of this chapter.

The administrator shall develop rules for a catastrophic health care cost program after consulting with the counties, organizations representing the counties, health care providers, and organizations representing health care providers.

The administrator shall cause a full and complete audit of the financial statements of the program as required in section 67-450B, Idaho Code.

(4) The administrator shall submit a request to the governor and the legislature in accordance with the provisions of chapter 35, title 67, Idaho Code, for an appropriation for the maintenance and operation of the

catastrophic health care program. [I.C., § 31-3517, as added by 1982, ch. 190, § 3, p. 511; am. 1991, ch. 233, § 11, p. 553; am. 1992, ch. 266, § 1, p. 821; am. 1993, ch. 387, § 4, p. 1417; am. 1995, ch. 9, § 2, p. 14.]

#### STATUTORY NOTES

**Cross References.** — Catastrophic health care cost account, § 57-813.

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19(1) of said ch. 233 declared an emergency

and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

**31-3518. Administrative responsibility.** — (1) The administrator shall, in order to facilitate payment to providers participating in the county medically indigent program and the catastrophic health care cost program, have on file the reimbursement rates allowed for all participating providers of medical care. However, in no event shall the amount to be paid exceed the usual, reasonable, and customary charges for the area.

(2) The administrator may contract with an independent contractor to provide services to manage and operate the program, or the administrator may employ staff to manage and operate the program.

(3) The administrator shall submit all proposed rules to the legislative council for review prior to adoption, in a manner substantially the same as proposed executive agency rules are reviewed under chapter 52, title 67, Idaho Code. Following adoption, the administrator shall submit all adopted rules to the legislature for review in a manner substantially the same as adopted executive agency rules are reviewed under chapter 52, title 67, Idaho Code. The legislature, by concurrent resolution, may modify, amend, or repeal any rule of the administrator. [I.C., § 31-3518, as added by 1982, ch. 190, § 4, p. 511; am. 1983, ch. 215, § 5, p. 594; am. 1991, ch. 233, § 12, p. 553.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19(1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter

233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

**Effective Dates.** — Section 6 of S.L. 1983, ch. 215 declared an emergency. Approved April 13, 1983.

**31-3519. Payment for services.** — Each board of county commissioners shall make payments to providers for covered services provided to the medically indigent as follows:

(1) Upon receipt of a final determination approving an application for necessary medical services, an applicant, a provider, or the third party on behalf of the applicant, shall, within sixty (60) days, submit a county claim in accordance with the procedures provided in chapter 15, title 31, Idaho



Code. The clerk shall calculate, or cause to be calculated, the medical provider reimbursement rate.

(2) Payment shall be made to providers on behalf of an applicant and shall be made on the next payment cycle after all necessary forms are presented by the claimant to the county and the clerk has determined the medical provider reimbursement rate. In no event shall payment be delayed longer than sixty (60) days from receipt of the county claim or provider bill.

(3) Payment to a provider pursuant to this chapter shall be payment of the debt in full and the provider shall not seek additional funds from the applicant.

(4) In no event shall a county be obligated to pay, pursuant to this chapter, an amount which exceeds the reimbursement rate for the entire medical bill as calculated above.

(5) The clerk shall forward appropriate claims to the catastrophic health care costs program within fourteen (14) days after determining an applicant's eligibility for that program and shall include a statement of which costs the clerk has or intends to pay.

(6) The catastrophic health care cost program shall, within forty-five (45) days after approval by the administrator, submit the claim to the state controller for payment. [I.C., § 31-3519, as added by 1982, ch. 190, § 5, p. 511; am. 1991, ch. 233, § 13, p. 553; am. 1995, ch. 9, § 3, p. 14; am. 1996, ch. 410, § 24, p. 1357.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 1 of S.L. 1990, ch. 87 repealed this section effective October 1, 1991; however, S.L. 1990, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature on April 13, 1991. Therefore, the repeal of this section by S.L. 1990, ch. 87 never took effect.

Section 7 of S.L. 1982, ch. 190 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 19 of S.L. 1991, ch. 233 as amended by § 1 of S.L. 1992, ch. 309 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

"(2) Sections 2 through 17 of this act shall

be in full force and effect on and after October 1, 1991.

"(3) Section 18 of this act shall be in full force and effect on or after October 1, 1993.

"(4) On October 1, 1991, all moneys contributed by counties to the catastrophic health care cost account as of the close of business on September 30, 1991, shall be separately identified and set aside, and shall be used by the administrator to fund medical costs of participating counties which occurred prior to October 1, 1991, until all claims are paid or until such moneys are exhausted. Any fund balance remaining after the proper payment of claims incurred prior to October 1, 1991, shall be apportioned back to the county of origin. If no fund balance exists, but outstanding claims exist that were incurred prior to October 1, 1991, such claims shall be paid as provided in subsection (5) of this section.

"(5) All claims incurred on or after October 1, 1991, shall be paid from the catastrophic health care cost account funded from state appropriations to the account." Became law without the governor's signature.

**31-3520. Contract for provision of necessary medical services for the medically indigent.** — The boards of county commissioners in their respective counties, may contract for the provision of necessary medical

services to the medically indigent of the county and may, by ordinance, limit the provision of and payment for nonemergency necessary medical services to a contract provider. They shall require the contractor to enter into a bond to the county with two (2) or more approved sureties, in such sum as the board may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the board quarterly all persons committed to his charge, showing the expense attendant upon their care and maintenance. [I.C., § 31-3520, as added by 1992, ch. 83, § 6, p. 256; am. 1996, ch. 410, § 25, p. 1357.]

### STATUTORY NOTES

**Effective Dates.** — Section 27 of S.L. 1996, ch. 410 declared an emergency and provided that § 6 [31-3503B] of the act would

be in full force and effect on and after passage and approval. Approved March 20, 1996.

### JUDICIAL DECISIONS

#### DECISIONS UNDER PRIOR LAW

#### Physician's Fees.

The emergency indigent medical care provided for in former law concerning employment of a physician, former laws concerning medically indigent persons and chapter 35 of Title 31, included reasonable charges for doc-

tor's services, as determined by the factfinder, whether or not the doctor was a paid staff employee of a hospital, or an independent practitioner. *Saxton v. Gem County*, 113 Idaho 929, 750 P.2d 950 (1988).

**31-3521. Employment of physician.** — The board may employ a physician to attend, when necessary, the patients of the county hospital, provided, however, that the board of county commissioners may enter into contracts with groups of licensed physicians for medical attendance upon patients of the county hospital or other persons receiving medical attendance at county expense. They may provide for the employment, at some kind of manual labor, of such of the patients as are capable and able to work and the attending physicians must certify to the person in charge or lessee of the county hospital the names of such of the patients as are incapable of manual labor, and when any such patient becomes capable the physician shall certify that fact. [I.C., § 31-3521, as added by 1992, ch. 83, § 6, p. 256.]

### JUDICIAL DECISIONS

#### DECISIONS UNDER PRIOR LAW

#### Physician's Fees.

The emergency indigent medical care provided for in former law concerning employment of a physician, former laws concerning medically indigent persons and chapter 35 of Title 31, included reasonable charges for doc-

tor's services, as determined by the factfinder, whether or not the doctor was a paid staff employee of a hospital, or an independent practitioner. *Saxton v. Gem County*, 113 Idaho 929, 750 P.2d 950 (1988).

**31-3522 — 31-3528. Application for county aid. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — The following sections were repealed by S.L. 1996, ch. 410, § 1:

31-3522: I.C., § 31-3522, as added by 1992, ch. 83, § 6, p. 256.

31-3523: I.C., § 31-3523, as added by 1992, ch. 83, § 6, p. 256.

31-3524: I.C., § 31-3524, as added by 1992, ch. 83, § 6, p. 256.

31-3525: I.C., § 31-3525, as added by 1992, ch. 83, § 6, p. 256.

31-3526: I.C., § 31-3526, as added by 1992, ch. 83, § 6, p. 256.

31-3527: I.C., § 31-3527, as added by 1992, ch. 83, § 6, p. 256.

31-3528: I.C., § 31-3528, as added by 1992, ch. 83, § 6, p. 256.

**31-3529 — 31-3549. [Reserved.]**

**31-3550. Declaration of public policy.** — It is the declaration of the legislature to be in the public interest to encourage nonlitigation resolution of claims between the counties and health providers of the state of Idaho by providing for prelitigation screening of such claims contesting indigent resource eligibility by a hearing panel as provided in this chapter. [I.C., § 31-A3501, as added by 1982, ch. 189, § 1, p. 509; am. and redsig. 2005, ch. 25, § 40, p. 82.]

**STATUTORY NOTES**

**Cross References.** — Hospitals for indigent sick, §§ 31-3501 — 31-3519.

**Compiler's Notes.** — This section was formerly compiled as § 31-A3501.

**31-3551. Advisory panel for prelitigation consideration of indigent resource eligibility claims — Procedure.** — The counties in the state of Idaho and the health providers furnishing care to eligible medically indigent persons, as defined in section 31-3502, Idaho Code, are directed to cooperate in providing an advisory panel in the nature of a special civil grand jury and procedure for prelitigation consideration of claims arising out of contested resource availability of persons applying for indigent relief under the provisions of chapter 35, title 31, Idaho Code, which proceedings shall be informal and nonbinding, but nevertheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal. The panel, thus created, will render opinions where the resource eligibility of applicants, as herein described, has been contested. [I.C., § 31-A3502, as added by 1982, ch. 189, § 1, p. 509; am. 1990, ch. 213, § 28, p. 480; am. and redsig. 2005, ch. 25, § 41, p. 82.]

**STATUTORY NOTES**

**Compiler's Notes.** — This section was formerly compiled as § 31-A3502.

**Effective Dates.** — Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L.

1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.



**31-3552. Appointment and composition of advisory panel.** — The panel will consist of three (3) members to be designated as follows: the chairman of the panel shall be an appointed designee by and of the director of the department of health and welfare of the state of Idaho, and must be without bias or conflict of interest; one (1) member will be appointed by and represent the Idaho association of counties; and one (1) member will be appointed by and represent the Idaho hospital association. All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration. [I.C., § 31-A3503, as added by 1982, ch. 189, § 1, p. 509; am. and redesign. 2005, ch. 25, § 42, p. 82.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31-A3503.

**31-3553. Advisory decisions of panel.** — The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section 31-3502(17), Idaho Code. Following proceedings on each claim, the advisory panel shall provide the affected parties with its comments and observations with respect to the claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any comments or observations which may be relevant and appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties. [I.C., § 31-A3504, as added by 1982, ch. 189, § 1, p. 509; am. 2004, ch. 300, § 3, p. 837; am. and redesign. 2005, ch. 25, § 43, p. 82.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31-A3504.

**31-3554. Tolling of limitation periods during pendency of proceedings.** — There shall be no judicial or other review or appeal of such matters. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time that such a claim is pending before the panel and for thirty (30) days thereafter. [I.C., § 31-A3505, as added by 1982, ch. 189, § 1, p. 509; am. and redesign. 2005, ch. 25, § 44, p. 82.]

## STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31A-3505.

**31-3555. Stay of court proceedings in interest of hearing before panel.** — During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any such pending claims shall stay proceedings in the interest of the conduct of such proceedings before the panel. [I.C., § 31-A3506, as added by 1982, ch. 189, § 1, p. 509; am. and redesign. 2005, ch. 25, § 45, p. 82.]

## STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31-A3506.

**31-3556. Expenses for advisory panel members.** — Expenses incurred by the members of the advisory panel in the performance of their duties will be borne by the respective organizations making the appointment. [I.C., § 31-A3507, as added by 1982, ch. 189, § 1, p. 509; am. and redesign. 2005, ch. 25, § 46, p. 82.]

## STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31-A3507.

**31-3557. Frequency of and agenda for meetings.** — Frequency of and agenda for meetings of the advisory panel will be subject to the discretion of the chair, based upon criteria to be established by the members of the panel. However, there shall be no more than four (4) meetings of the panel per year. [I.C., § 31-A3508, as added by 1982, ch. 189, § 1, p. 509; am. and redesign. 2005, ch. 25, § 47, p. 82.]

## STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 31-A3508.

## CHAPTER 35A

PRELITIGATION CONSIDERATION OF INDIGENT  
RESOURCE ELIGIBILITY CLAIMS

## SECTION.

31-A3501 — 31-A3508. [Amended and Redesignated.]

**31-A3501 — 31-A3508. [Amended and Redesignated.]****STATUTORY NOTES**

**Compiler's Notes.** — These sections were amended and redesignated as §§ 31-3550 — 31-3557 by S.L. 2005, ch. 25, §§ 40 to 47.

**CHAPTER 36****COUNTY HOSPITAL BOARDS****SECTION.**

- 31-3601. Resolution of county commissioners — Hearing and notice.  
 31-3602. Creation of board.  
 31-3603. Members of board.  
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**31-3601. Resolution of county commissioners — Hearing and notice.** — Any county which now has or may plan to build, purchase or by any other means acquire a county hospital shall create a county hospital board in the following manner: The board of county commissioners shall, by appropriate motion\* or resolution adopted and incorporated in its minutes, signify that it is the intention of the board of county commissioners to create a county hospital board for the purpose of conducting, operating and maintaining a county hospital or hospitals in accordance with the provisions of this act, and shall fix a date, not less than three (3) nor more than six (6) weeks from the date of the adoption of such motion or resolution, for a hearing, and shall order the clerk of the board to publish notice of such meeting in one (1) or more newspapers published and having general circulation in the county, which notice shall include the time and place of such hearing, at which the board of county commissioners will hear any person or persons interested upon the matter of whether a hospital board shall be created within such county, which publication shall be made at least two (2) weeks before the date set for such hearing. [1946 (1st E.S.), ch. 38, § 1, p. 75; am. 1982, ch. 340, § 1, p. 851.]

**STATUTORY NOTES**

**Cross References.** — County commissioners to insure county property, § 31-814.

Lease of county hospital or hospital equipment, §§ 31-836, 31-3515.



**Compiler's Notes.** — The words "this act" compiled as §§ 31-3601 — 31-3616, 31-3617 refer to S.L. 1946 (1st E.S.), ch. 38, §§ 1-19, — 31-3619.

**31-3602. Creation of board.** — The board shall meet at the place and time fixed, at which time and place any elector or taxpayer residing within the county may appear and be heard upon the question of whether such hospital board shall be created, and after such hearing, if the board of county commissioners shall then deem it for the best interests of the county that a county hospital board be created, it shall create such board by an order duly adopted and spread upon its minutes. [1946 (1st E.S.), ch. 38, § 2, p. 75.]

**31-3603. Members of board.** — (1) The board of county commissioners shall, within thirty (30) days after the adoption of the order creating such board, appoint an odd number, not less than five (5) nor more than fifteen (15) persons, as members of such hospital board and shall make such appointments a matter of record in the minutes of the board. Provided however, if the appointed county commissioner member of the hospital board is appointed with voting privileges as provided in subsection (4) of this section, the board of county commissioners shall appoint another member to ensure that the county hospital board members appointed as provided in this subsection comprise an even number of members of not less than six (6) nor more than fourteen (14) persons.

(2) The county hospital board may, in its discretion, later change the number of members of the board, within the prescribed limits, but no such change in the number of members of the hospital board shall serve to terminate any terms to be served by present members of the hospital board.

(3) Vacancies on the county hospital board shall be filled by the board of county commissioners. In filling vacancies, the board of county commissioners shall review and consider, but shall not be bound by, a list of three (3) nominees for each position to be filled and submitted to them by the county hospital board. The members of the board shall be selected as nearly as practicable from the several localities of the county and shall qualify by taking and subscribing the usual oath of office. The county hospital board shall file with the board of county commissioners a blanket bond covering all of its members in the sum of not less than ten thousand dollars (\$10,000) to be approved by the board of county commissioners, which bond shall have the conditions usually included in the bonds of public officers. The members of the county hospital board shall be selected without regard for partisan political affiliations.

(4) One (1) member of the board of county commissioners shall be appointed to the board either as an ex officio member without vote, or as a voting member, as determined by the board of county commissioners at the time of the appointment. If the county commissioner member is appointed as a voting member, the board of county commissioners shall also appoint another member to the hospital board as provided in subsection (1) of this section to ensure the board is comprised of an odd number of voting members.

(5) In addition to the appointed members of the county hospital board, the chief executive officer shall be an ex officio member of the county hospital board, but without vote. [1946 (1st E.S.), ch. 38, § 3, p. 75; am. 1957, ch. 57, § 1, p. 98; am. 1973, ch. 98, § 1, p. 166; am. 1975, ch. 58, § 1, p. 122; am. 1977, ch. 139, § 1, p. 300; am. 1982, ch. 340, § 2, p. 851; am. 1997, ch. 147, § 1, p. 422.]

#### STATUTORY NOTES

**Cross References.** — Bonds of officers, Oath of office, §§ 59-401 — 59-406.  
§ 59-806.

Hospital Liability Trust Act, §§ 41-3701 —  
41-3729.

**31-3604. Term of office of members.** — The term of office of the members of the county hospital board shall be three (3) years and until a successor is appointed and qualified: Provided, that of the first board appointed one-third ( $\frac{1}{3}$ ) of the membership, or as nearly one-third ( $\frac{1}{3}$ ) as the number to be appointed shall permit, shall be appointed for the term of one (1) year; one-third ( $\frac{1}{3}$ ) of the membership, or as nearly one-third ( $\frac{1}{3}$ ) as the number to be appointed shall permit, for the term of two (2) years; and one-third ( $\frac{1}{3}$ ) of the membership, or as nearly one-third ( $\frac{1}{3}$ ) as the number to be appointed shall permit, for the term of three (3) years. All succeeding appointments shall be for the term of three (3) years, except that any vacancy occurring by reason of death, resignation or other cause shall be for the remainder of the term of the member whose office becomes vacant. [1946 (1st E.S.), ch. 38, § 4, p. 75.]

**31-3605. Organization of board — Term of existence.** — The county hospital board may be created under the provisions of this chapter at any time, and when created the members of the county hospital board who have been appointed and qualified shall, within ten (10) days after the appointment of the board, meet, organize and enter upon the performance of its duties. A county hospital board once created shall continue until such time as its discontinuance is ordered by a majority vote of the qualified electors of the county voting upon the question of discontinuance of the county hospital board at an election, held subject to the provisions of section 34-106, Idaho Code, at which the question is submitted to the electors for their vote by appropriate action and proceedings of the board of county commissioners. [1946 (1st E.S.), ch. 38, § 5, p. 75; am. 1995, ch. 118, § 35, p. 417.]

**31-3606. Meetings and quorum.** — The county hospital board shall hold its meetings and shall conduct all of its business at a place to be designated by the board of county commissioners or as may be subsequently designated by resolution of the county hospital board, and shall meet at its place of business in regular session on the first Monday of each month, or at such other time as may be adopted by resolution of the county hospital board, and at such other times as may be necessary or convenient for the transaction of its business. Any member of the board absent for three (3)

successive regular meetings may be deemed to have resigned from the board and the board of county commissioners shall immediately appoint another person in the manner provided in section 31-3603, Idaho Code, to fill the vacancy so occurring. Special meetings shall be called by the chairman of the county hospital board by written notice of at least three (3) days served upon or delivered to each member of the board. The board may recess or continue to a time certain any meeting, regular or special, by motion adopted and included in its minutes. [1946 (1st E.S.), ch. 38, § 6, p. 75; am. 1970, ch. 129, § 1, p. 303; am. 1982, ch. 340, § 3, p. 851.]

### JUDICIAL DECISIONS

#### **Compliance.**

The meeting of a county hospital board held at the home of a staff member in December, the date and place for which meeting had been set by action taken by the board at its October meeting, duly recorded in the board's minutes, and an additional notice or reminder of which was sent to each member three days

before the meeting itself, at which a quorum attended and minutes were taken, substantially complied with this section regarding meetings of a county hospital board and with this state's open meeting law, I.C. §§ 67-2340 to 67-2347. Harms Mem. Hosp. v. Morton, 112 Idaho 129, 730 P.2d 1049 (Ct. App. 1986).

**31-3607. Duties of board.** — (a) Fiscal Affairs. — The county hospital board shall be charged with the care, custody, upkeep, management and operation of all property belonging to the county and devoted to the purposes provided in sections 31-3501 and 31-3503, Idaho Code, and shall be responsible for all moneys received by it, including all revenues from the operation of such property, all moneys received by tax levies for operation of such property, and all moneys received from whatever source, by contribution or otherwise, for such purposes: Provided, that if any contribution of money or property be offered to the hospital board of the county for use for a specific purpose the hospital board may, if it deems it for the best interest of the hospital or other facility or property under its management, accept such contribution and use such contribution for such purpose.

(b) Funds — Custody and Disbursement. — The hospital board shall safely keep or cause to be kept all moneys coming into the care, custody or possession of the board in strict compliance with the public depository law of this state, and shall pay out such money for valid bills and obligations of the hospital, and shall keep or cause to be kept proper records in its minutes of all its proceedings and all business transactions and proper accounts of all moneys received by it, expended and on hand. The minutes of the board shall be open to inspection by any taxpayer or elector of the county during all regular office hours.

(c) Reports. — The county hospital board shall report to the board of county commissioners within thirty (30) days after the acceptance of the annual hospital audit after the close of the fiscal year and shall annually publish in one (1) issue of a newspaper having general circulation in the county a financial statement reflecting the financial operations of the hospital, together with such other information as the board of county commissioners may deem necessary for the information of the people of the county. The county hospital board shall also prepare in its regular course of business unaudited monthly financial reports reflecting the financial oper-



ations of the hospital. The county hospital board shall provide a copy of those monthly reports to the member of the board of commissioners serving as an ex officio member of the county hospital board.

(d) **Limitations.** — The county hospital board subject to the budgetary limitations herein contained may acquire or build other property for the purposes provided in sections 31-3501 and 31-3503, Idaho Code, or improve, remodel, enlarge, reduce, or dispose of property being used for such purposes. The county hospital board shall not have power to create any indebtedness in excess of the amount of its annual budget as approved by the board of county commissioners: Provided, that if the county hospital board be formed after the time fixed by law for adoption of the budget, it may then formulate and submit to the board of county commissioners a budget for the rest of the current year, which budget, however, shall not provide for expenditure or creation of indebtedness in an amount greater than the estimated income for that year, together with any receipts from taxes specially levied for hospital purposes in such year. [1946 (1st E.S.), ch. 38, § 7, p. 75; am. 1970, ch. 129, § 2, p. 303; am. 1982, ch. 340, § 4, p. 851; am. 1993, ch. 112, § 5, p. 283.]

#### STATUTORY NOTES

**Cross References.** — Public depository law, § 57-101 et seq.

**31-3608. Officers of board.** — The county hospital board shall elect a chairman, vice-chairman, a secretary and a treasurer. The chairman and vice-chairman shall be members of the board. The secretary may be a member of the board or otherwise, as the board may determine. The treasurer may be a member of the board or otherwise, as the board may determine. The chairman or vice-chairman shall preside at all meetings, call special meetings and shall sign all minutes of the board when the same have been approved. The chairman or vice-chairman, or such other members of the board as the board may designate, shall be authorized by the board to approve disbursements of funds in the custody of the hospital board.

The secretary shall receive such pay as the board may direct, and shall keep the minutes of all meetings in a book provided for that purpose, and shall sign the same when said minutes have been approved.

The treasurer shall have custody of the monies for which the hospital board is responsible, and shall disburse the same only upon authorization of the board. The treasurer shall receive such pay for services as the board may determine, and shall be required to file bond for the faithful performance of his duties as treasurer in an amount at least equal to the largest amount of money to come into his hands. [1946 (1st E.S.), ch. 38, § 8, p. 75; am. 1982, ch. 340, § 5, p. 851.]

**31-3609. Chief executive officer and employees.** — The county hospital board shall select and employ a competent chief executive officer whom they shall vest with general managerial powers over the operation of the hospital property, subject to the provisions of this act and subject to the

rules and regulations for the conduct of the hospital affairs as formulated by the hospital board and approved by the board of county commissioners, together with such assistant or assistants as the board may find necessary or convenient to the efficient and successful operation of the hospital property. The board shall fix a salary to be paid to the chief executive officer and to any assistant chief executive officer or chief executive officers, and shall be authorized to contract with competent persons for such services for such period as the board may authorize. The chief executive officer shall be responsible for the employment, supervision, direction, assignment and discharge of all operating employee personnel. Payment for such services shall be according to the scale of wages as fixed by the hospital board and in effect at the time. The hospital board shall have the power to change, by increase or decrease, the scale of wages to be paid at any time.

Any suit or action instituted to recover any debt or monies due any county hospital arising out of the operation thereof may be instituted by the chief executive officer of such hospital in his official capacity and in the name of the hospital. The chief executive officer shall account to the county hospital board for all sums so collected. [1946 (1st E.S.), ch. 38, § 9, p. 75; am. 1955, ch. 102, § 1, p. 224; am. 1982, ch. 340, § 6, p. 851.]

#### JUDICIAL DECISIONS

**Cited in:** *Bissett v. Unnamed Members of Political Compact*, 111 Idaho 863, 727 P.2d 1291 (Ct. App. 1986).

**31-3610. Rules and regulations for operation of hospital property — Hospital staff.** — The county hospital board shall have power to formulate and adopt such rules and regulations for the conduct and operation of the hospital property as it may deem necessary or convenient for the efficient, economical and successful operation thereof, and which rules and regulations when approved by the board of county commissioners shall be in full force and effect. It shall be the duty of the county hospital board to formulate and adopt such changes, additions, modifications and rescissions of the rules and regulations as it may find or deem necessary or convenient for the efficient, economical and successful operation of the hospital property, which changes, additions, modifications and rescissions when approved by the board of county commissioners shall be in full force and effect.

Such rules and regulations may, as a part thereof, establish a standard or standards upon which persons will be admitted to the hospital staff of physicians and surgeons; provide procedure and requirements for application and admission to such staff; provide procedure and causes for the removal of any person or persons from such staff; provide for the making of, inspection, study and review of reports upon cases which are or have been in the hospital property; and any and all such other matters and things as may be required to bring and keep the hospital property and its operations to the standard required for accrediting and acceptance under the hospital licensure requirements of the state of Idaho and, if the board deems it

appropriate, under accreditation standards of the joint commission on the accreditation of hospitals. [1946 (1st E.S.), ch. 38, § 10, p. 75; am. 1982, ch. 340, § 7, p. 851.]

**31-3611. Rules and regulations open to inspection — Certified copies — Persons chargeable with knowledge.** — All rules and regulations for the operation of the hospital property which are in effect shall be kept on file in the office of the secretary of the county hospital board, and shall be open to the inspection of any person at any time during regular business hours. Copies certified as full, true and correct shall be furnished to any person upon payment of such fee as may be fixed by the county hospital board. Every officer and employee of the hospital, and every member of the staff of physicians and surgeons shall be responsible for knowledge of and full compliance with such rules and regulations. [1946 (1st E.S.), ch. 38, § 11, p. 75.]

**31-3612. Fiscal year — Receipt of moneys.** — The fiscal year of the county hospital board shall be from the date fixed by the county hospital board to the same day and month of the next succeeding year. All moneys received by the county hospital board from whatever source shall be paid into the treasury of the county hospital board. Any moneys remaining on hand in such treasury at the end of each fiscal year shall not be paid into the general fund of the county, but shall be retained by the treasurer of the county hospital board and included and used as cash on hand in the budget for hospital operation in the next fiscal year. [1946 (1st E.S.), ch. 38, § 12, p. 75; am. 1970, ch. 129, § 3, p. 303.]

**31-3613. Annual budget — Tax levy.** — The county hospital board shall prepare and submit to the board of county commissioners each year a budget for the operation of the hospital property at the time and in the form as provided by law for the preparation and submission of budgets by other county departments. The board of county commissioners shall thereafter approve, or amend or modify such budget as it deems proper, and as approved or amended or modified shall include the same in the county budget. No tax levy for the purpose of this act shall exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property in the county. When taxes levied for the purposes of this act have been collected they shall be paid to the treasurer of the county hospital board, without charge for collection, to be used for the purposes authorized by this act. [1946 (1st E.S.), ch. 38, § 13, p. 75; am. 1961, ch. 176, § 2, p. 270; am. 1995, ch. 82, § 6, p. 218.]

#### STATUTORY NOTES

**Cross References.** — County budget law, § 31-1601 et seq.

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-3601.

**31-3614. Taxing unit — Tax anticipation notes or warrants authorized.** — Upon the creation and appointment of the county hospital



board by the board of county commissioners the county hospital board shall become and be a taxing unit under the provisions of the Idaho budget law, and as such shall be empowered to issue tax anticipation notes or warrants as provided by law for hospital operation. [1946 (1st E.S.), ch. 38, § 14, p. 75.]

**31-3615. Contracting and procurement powers of board.** — The county hospital board shall have power to contract for, purchase and pay for all material, equipment, services and supplies necessary or convenient for the efficient, economical and successful operation and maintenance of the county hospital properties. The county hospital board may make expenditures in accordance with the provisions of chapter 28, title 67, Idaho Code. Moreover, the county hospital board which participates with other hospitals as a member of a group purchasing association that engages in a formal competitive bidding process on behalf of member institutions for the purchase of hospital supplies and equipment may utilize that bidding process established by chapter 28, title 67, Idaho Code. For purposes of this subsection, payment for services may include reasonable expenses incident to the hiring or maintaining of hospital staff, chief executive officers, board members or operating employee personnel, to be incurred and paid under rules and regulations adopted and approved as described in section 31-3610, Idaho Code. [1946 (1st E.S.), ch. 38, § 15, p. 75; am. 1955, ch. 102, § 2, p. 224; am. 1975, ch. 91, § 1, p. 187; am. 1981, ch. 24, § 1, p. 42; am. 1982, ch. 340, § 8, p. 851; am. 1983, ch. 26, § 1, p. 75; am. 2005, ch. 213, § 2, p. 637.]

**31-3616. Hospital service upon prepayment or assurance plan.** — The county hospital board shall have power to contract with persons, associations, corporations or any other bodies engaged in providing for hospital service upon a prepayment or assurance plan, for the rendition of service by the hospital in the future, and under such contracts may accept and credit to the payer any sum or sums of money in prepayment of services to be rendered in the future, but such contracts shall be conditioned upon space and facilities being available in the hospital at the time such services are required. The county hospital board shall have no power to loan or give any money in its possession for hospital purposes to any person, partnership, association, corporation or any other body whatever. [1946 (1st E.S.), ch. 38, § 16, p. 75; am. 1951, ch. 285, § 1, p. 615.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1951, ch. 285 declared an emergency. Approved March 21, 1951.

**31-3616A. Disposal of personal property.** — Notwithstanding the provisions of section 31-808, Idaho Code, county hospital boards may dispose of personal property previously purchased, paid for, or otherwise acquired by the board, so long as any such property to be disposed of has a resale or salvage value not in excess of five thousand dollars (\$5,000) and is

not a fixture under section 55-101, Idaho Code; provided, that the board shall notify the public of its intent to dispose of any such property prior to sale by publication once in a newspaper of general circulation within the county. Where any such property, regardless of resale or salvage value may, in the board's judgment, pose a threat to public health or safety if disposed of at public auction, the board is authorized to dispose of it without regard to the provisions of section 31-808, Idaho Code. [I.C., § 31-3616A, as added by 1981, ch. 43, § 1, p. 65; am. 1982, ch. 340, § 9, p. 851.]

**31-3617. Liberal interpretation of powers of board.** — The grant of powers in this act contained to county hospital boards and to the duly authorized officers and agents thereof shall be liberally interpreted and construed as a broad and general grant of powers to the end that the operation and administration of county hospital properties may be efficient, economical and successful; the enumeration of certain powers that would be implied without such enumeration shall not be construed as a denial or exclusion of other implied powers necessary for the free and efficient exercise of the powers expressly granted. [1946 (1st E.S.), ch. 38, § 17, p. 75.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-3601.

**31-3618. Existing statutes not affected.** — This act is not intended and shall not be construed to repeal or amend existing statutes providing for other method or methods of operating county hospitals, but is intended to afford an optional means by which any county may, if it so chooses, by action of its board of county commissioners creating and appointing a county hospital board, operate its hospital properties under such county hospital board as provided in this act. [1946 (1st E.S.), ch. 38, § 18, p. 75.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-3601.

**31-3619. Separability.** — If any section or sections, or part or parts thereof be held to be unconstitutional, or invalid for any other reason, such holding shall not affect the validity of the remaining portions of the act. [1946 (1st E.S.), ch. 38, § 19, p. 75.]

**31-3620. Accounts and reports of person in charge.** — The person in charge of the county hospital shall keep a correct account of all receipts and expenditures in connection therewith, and make full and complete reports thereof quarterly to the board of county commissioners. [I.C., § 31-3620, as added by 1992, ch. 83, § 7, p. 256.]

## CHAPTER 37

## JOINT CITY AND COUNTY HOSPITALS

## SECTION.

31-3701. Acquisition and operation authorized.

31-3702. Bond election.

31-3703. Lease or sale of hospital.

31-3704. Hospital board.

31-3705. Appointment and removal of board members — Officers — Meetings.

## SECTION.

31-3706. Powers of hospital board — Expenses of operation.

31-3707. Deposit of hospital funds.

31-3708. [Repealed.]

31-3709. Liability of depository or board member or officer.

31-3710. Financial reports.

**31-3701. Acquisition and operation authorized.** — Any county and city located in such county are hereby authorized to create a joint county-city hospital authority, to jointly purchase, build, maintain and operate hospitals, hospital grounds, nurses homes, superintendent's quarters and any other necessary buildings and equipment, on such terms and paying for the same in such proportions as such governing bodies of such county and city may determine, and may jointly operate any hospital or hospitals which are separately owned by the county or the city as a joint county-city hospital authority. A joint county-city hospital authority may be created under this chapter by joint agreement approved by resolution of the board of county commissioners of the county and the city council of the city. A joint county-city hospital authority created under this chapter shall be an independent legal entity with the powers set forth in this chapter. [1947, ch. 222, § 1, p. 534; am. 1995, ch. 221, § 1, p. 765.]

## STATUTORY NOTES

**Cross References.** — Agreements with other agencies for establishment and operation of joint health facilities, § 39-1416.

County commissioners to insure county property, § 31-814.

Joint agreements with other agencies for improvements, §§ 67-2326 — 67-2333.

Lease of county hospitals or hospital equipment, § 31-3515.

## JUDICIAL DECISIONS

**Cited in:** *Hickman v. Lunden*, 78 Idaho 191, 300 P.2d 818 (1956).

**31-3702. Bond election.** — The governing bodies of said county and city, when they deem the welfare of their respective municipalities requires it, and when petitioned thereto by a number of taxpayers, in the case of the city equal to thirty per cent (30%) of the number of persons voting for mayor of said city at the last city election held therein, and in the case of the county, when petitioned thereto by a number of resident taxpayers of such county equal to thirty per cent (30%) of the number of persons voting for the secretary of state of the state of Idaho at the last election preceding the date of such petition, shall submit to the qualified electors of such city or county, as the case may be, at any general election to be held therein, or at an election called therein by the governing bodies of such city or county, subject



to the provisions of section 34-106, Idaho Code, the proposition whether the negotiable coupon bonds of such city and/or county to the amount stated in such proposition shall be issued and sold for the purposes mentioned and described in section 31-3701, Idaho Code; Provided, however, in case that either such city or county entering into such contract provided for in section 31-3701, Idaho Code, shall have already voted bonds of such city or county for the purpose of building therein a hospital, such city or county shall be authorized to use the proceeds of such bonds so already voted to pay for its proportionate part of the cost and expense of building, maintaining and operating the facilities provided for in section 31-3701, Idaho Code. [1947, ch. 222, § 2, p. 534; am. 1995, ch. 118, § 36, p. 417.]

**31-3703. Lease or sale of hospital.** — Such city and county acting through the respective governing bodies of such municipality and county shall have the right to lease such hospital upon such terms and for such a length of time as they may decide, or to sell the same; provided, however, that no such leasing or sale shall be final or valid unless and until it has been approved by a majority of the qualified electors of such county and city voting on such question at an election called for that purpose, subject to the provisions of section 34-106, Idaho Code. [1947, ch. 222, § 3, p. 534; am. 1995, ch. 118, § 37, p. 417.]

**31-3704. Hospital board.** — The management and operation of any hospital which is jointly owned by any county and city in this state may, by resolution of the board of county commissioners of such county and the city council of such city in all cases where both county and city are engaged in the joint operation of such hospital, and in other cases by resolution of either the board of commissioners of the county or the council of the city which is operating such hospital, be delegated to and vested in a board composed of five (5) electors of such county, to be known and designated as the “Hospital Board of \_\_\_\_\_ County.”

The management and operation of any hospital or hospitals jointly owned or jointly operated by a joint county-city hospital authority shall be vested in a board of trustees consisting of not less than five (5) nor more than ten (10) members, as shall be specified in the agreement between the county and city creating such joint county-city hospital authority, which board of trustees shall be appointed and shall be subject to removal in the manner set forth in section 31-3705, Idaho Code. [1935, ch. 125, § 1, p. 293; am. 1995, ch. 221, § 2, p. 765.]

**31-3705. Appointment and removal of board members — Officers — Meetings.** — In cases where the city and county are jointly operating such hospital, and where a hospital or hospitals are being operated by a joint county-city hospital authority, the members of said hospital board or board of trustees shall be appointed by the board of county commissioners and the city council in such manner as may be agreed between them, and where either county or city is alone operating the jointly owned hospital, by the board of county commissioners of the county or the council of the city which

is so operating the same. All members of the board shall be subject to removal at any time by the body appointing them, but unless removed shall hold office until the second Monday in the first month of the hospital's fiscal year next following the date of their appointment and until their successors are appointed and qualified; provided, that members of the board of trustees of a joint county-city hospital authority may be removed only for conviction of a felony, mental incapacity, failure to attend meetings of the board as required in the bylaws of the board, or other good and sufficient cause.

The officers of the hospital board shall be a president, secretary and treasurer and such other officers as the board shall designate, all of whom shall be elected by such board. The president must be a member of the board but the secretary and treasurer need not be. It shall be the duty of the secretary of the board to keep an accurate and complete record of all acts and proceedings of the board. It shall be the duty of the treasurer to have custody of all funds coming into the custody of the board and he shall perform such other duties as are herein specified, and he shall give bond in such amount as shall be fixed by the board in the same manner and on the same terms and conditions as required for the official bonds of county officers. All officers of the hospital board shall be subject to removal by said board at any time. The hospital board and any of its officers or members may be paid reasonable compensation as shall be authorized by the board and/or council authorized to appoint the members of the board.

Meetings of the hospital board shall be held at such time and place and under such rules and regulations as the board may establish. A majority of the board shall constitute a quorum for the transaction of business, and a majority vote of the members present at any meeting properly called shall govern as to all questions coming before the meeting. [1935, ch. 125, § 2, p. 293; am. 1982, ch. 348, § 1, p. 862; am. 1995, ch. 221, § 3, p. 765.]

**31-3706. Powers of hospital board — Expenses of operation.** — All hospital boards, including boards of trustees of joint county-city hospital authorities, so appointed are authorized, subject to such special regulations as may be from time to time imposed by the county commissioners and/or city council appointing said board, or, in the case of joint county-city hospital authorities, as may be provided in the agreement creating such authority:

1. To take entire charge of and run, manage and operate the hospital for which they were appointed.

2. To promulgate such rules and regulations for the management and operation of such hospital and the conduct of its business and the business of the board as they may deem expedient, not inconsistent with law or the special regulations imposed by the county commissioners and/or city council appointing the board, or, in the case of a county-city hospital authority, with the agreement creating such authority.

3. To employ such persons as they may deem necessary for or in the operation of said hospital and/or the conduct of the business of the board, to fix their compensation and to discharge them at pleasure.

4. To collect and receive all funds accruing from the operation of said hospital and all those appropriated or provided for the management,

operation and/or conduct thereof by the city and/or county, and all such funds shall be paid over to the hospital board and held and disbursed by it as herein provided.

5. To exercise such other powers as the appointing authority may delegate to the board.

Said hospital board shall allow and pay all expenses for the management, maintenance and operation of said hospital and the expenses of said board from such funds or any other funds in said board's control, without allowance by either the board of county commissioners or the city council, but no funds in the custody of said hospital board or its treasurer shall be paid out except on order of such hospital board, and said board shall not, without special authorization of the board of county commissioners, create any debt or debts chargeable against the county, nor without special authorization of the city council create any debt or debts chargeable against the city, exceeding in the aggregate the total of the cash in the custody of the hospital board and the appropriations previously made by the city and/or county, available for the payment thereof. [1935, ch. 125, § 3, p. 293; am. 1995, ch. 221, § 4, p. 765.]

#### STATUTORY NOTES

**Effective Dates.** — Section 5 of S.L. 1995, ch. 221 declared an emergency. Approved March 20, 1995.

**31-3707. Deposit of hospital funds.** — No funds coming into the custody of the hospital board under the provisions of this act need be deposited with the treasurer of either the city or county, but the same, including all checks, drafts and other instruments for the payment of money acceptable for deposit in banks, may be deposited in a bank or trust company in accordance with the provisions of the public depository law. [1935, ch. 125, § 4, p. 293; am. 1969, ch. 255, § 1, p. 787.]

**31-3708. Security for deposits. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised S.L. 1935, ch. 125, § 5, p. 293, was repealed by S.L. 1969, ch. 255, § 6.

**31-3709. Liability of depository or board member or officer.** — No bank or trust company accepting such deposits shall have any duty or obligation whatsoever as to the disposition of any funds so deposited by either said board or any member, officer or agent thereof, or by the person designated to check against the same, nor be liable in any respect for the misappropriation, misapplication or wrongful use or disposal thereof by such board or any officer, member or agent thereof, or by any person designated to check against the same, and neither the board nor any member, officer or agent thereof shall be liable either personally or on any



bond for the nonpayment by any bank or trust company of funds deposited with it pursuant to and in conformity with the provisions of this act. [1935, ch. 125, § 6, p. 293.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1935, ch. 125, §§ 1-7, compiled as §§ 31-3704 — 31-3710.

**31-3710. Financial reports.** — The treasurer of every such hospital board shall make an annual financial report and accounting to the board of county commissioners and the city council owning and/or operating such hospital, within thirty (30) days after the acceptance of the annual hospital audit after the close of the fiscal year, which report shall show all moneys received and the source thereof, and all moneys paid out and the purpose thereof, during the period covered by the report, together with the balances remaining on hand and the amount, if any, of the unpaid obligations. The board of every such hospital shall also prepare in its regular course of business unaudited monthly financial reports reflecting the financial operations of the hospital. Every such hospital board shall provide a copy of those monthly reports to the respective governing bodies of such municipality and county. [1935, ch. 125, § 7, p. 293; am. 1982, ch. 348, § 2, p. 862.]

### CHAPTER 38

#### ZONING REGULATIONS

##### SECTION.

31-3801 — 31-3804. [Repealed.]

31-3805. Delivery of water.

31-3806. Civil action to enforce.

**31-3801 — 31-3804. Grant of power to counties — Agricultural exemption — Zoning commission. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — Sections 31-3801, 31-3803, 31-3804, which comprised S.L. 1957, ch. 225, §§ 1, 3, 4, p. 505; am. 1961, ch. 221, § 1, p. 357; am. 1965, ch. 12, §§ 1, 3, p. 20; am. 1967, ch. 368, § 1, p. 1061, were repealed by S.L. 1975, ch. 188, § 1, p. 515 effective July 1, 1975.

Section 31-3802, which comprised S.L. 1957, ch. 225, § 2, p. 505; am. 1961, ch. 221, § 2, p. 357, was repealed by S.L. 1965, ch. 12, § 2, p. 20.

For present law see §§ 67-6501 — 67-6529.

**31-3805. Delivery of water.** — (1) When either a subdivision within the meaning of chapter 13, title 50, Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity, hereinafter called "irrigation entity" for the purposes of this chapter, no subdivision plat or

amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land will be accepted, approved, and recorded unless:

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals:

(i) For proposed subdivisions within the incorporated limits of a city, the irrigation system must be approved by the city zoning authority or the city council, as provided by city ordinance, with the advice of the irrigation entity charged with the delivery of water to said lands.

(ii) For proposed subdivisions located outside incorporated cities but within a negotiated area of city impact pursuant to chapter 65, title 67, Idaho Code, or within one (1) mile outside the incorporated limits of any city, both city and county zoning authorities and city council and county commissions must approve such irrigation system in accordance with section 50-1306, Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must be advised regarding the irrigation system.

(iii) For proposed subdivisions located outside an area of city impact in counties with a zoning ordinance, the delivery system must be approved by the appropriate county zoning authority, and the county commission with the advice of the irrigation entity charged with the delivery of water to said lands.

(iv) For proposed subdivisions located outside an area of city impact in counties without a zoning ordinance, such irrigation system must be approved by the board of county commissioners with the advice of the irrigation entity charged with the delivery of water to said lands.

(2)(a) In the event that the provisions of either subsection (1)(a) or (1)(b) of this section have not been complied with, the assessments of the irrigation entity for operation, maintenance, construction, and other valid charges permitted by statute shall in no way be affected. Any person, firm or corporation or any other person offering such lots in such subdivision for sale, or selling such lot shall, prior to the sale, advise the purchaser in writing as follows:

(i) That suitable water deliveries have not been provided; and

(ii) That the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and

(iii) That the individual purchaser shall be responsible to pay such legal assessments; and

- (iv) That the assessments are a lien on the land within the irrigation entity; and
  - (v) That the purchaser may at a future date petition the appropriate irrigation entity for exclusion from the irrigation district.
- (b) A disclosure statement executed by the purchasers and duly acknowledged, containing the representations required in this subsection of this section, shall be obtained by the seller at the time of receipt of the earnest money from the purchaser, and affixed to the proposed sales contract and a copy thereof shall be forwarded to the appropriate irrigation entity. [I.C., § 31-3805, as added by 1976, ch. 153, § 1, p. 547; am. 1990, ch. 365, § 1, p. 977; am. 1996, ch. 51, § 1, p. 152; am. 1996, ch. 399, § 1, p. 1330; am. 1997, ch. 148, § 1, p. 423.]

### STATUTORY NOTES

**Amendments.** — This section was amended by two 1996 acts — ch. 51, § 1, effective July 1, 1996, and ch. 399, § 1, effective March 20, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 51, § 1, in subsection (1), substituted “chapter” for “section” following “for the purposes of this”.

The 1996 amendment, by ch. 399, § 1, in subsection (1), inserted “, amendment to a subdivision plat or record of survey” preceding “will be accepted”; in subdivision (1)(a), substituted the second occurrence of “entity” for “district” and inserted “, amendment to a subdivision plat or record of survey” following “subdivision plat”; in subdivision (1)(b), inserted “, amendment to a subdivision plat or record of survey” following “subdivision plat”

and substituted “for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver” for “to permit the delivery of”; in subdivision (1)(b)(i), substituted “or” for “and” and inserted “, as provided by city ordinance,” following “city council”; in subdivision (1)(b)(ii), inserted “within a negotiated area of city impact pursuant to chapter 65, title 67, Idaho Code, or”; in subdivision (1)(b)(iii), inserted “outside an area of city impact”; in subdivision (1)(b)(iv), inserted “outside an area of city impact” and “the board of county commissioners with the advice of”; in subdivision (2)(a), substituted “Any person” for “However, any person”; and in subdivision (2)(a)(i), inserted “suitable” preceding “water”.

**31-3806. Civil action to enforce.** — (1) If the owner of the property of the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land fails to comply with either subsection (1) or (2) of section 31-3805, Idaho Code, prior to sale of the lots in the subdivision to purchasers, the owner of the property, or the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land shall be liable to any purchaser for the costs of the lot’s exclusion plus all assessments due and owing or the actual cost of installation of an irrigation delivery system not to exceed one thousand five hundred dollars (\$1,500) per lot. The purchaser shall have a right to enforce this obligation in a civil action and the purchaser shall have the right to elect exclusion or installation of the system in such action.

(2) Any person, firm or corporation who shall omit, neglect or refuse to provide the purchaser or the irrigation entity within whose boundaries the land is located, a copy of the disclosure statement required by subsection (2) of section 31-3805, Idaho Code:



(a) Shall be liable to the purchaser as provided in subsection (1) of this section.

(b) Shall be liable to the irrigation entity for its reasonable expense, including employee time, of locating the purchaser and providing the information required in the form and for advising affected purchasers of the lack of a water delivery system and for any assessments on the property that are past due at the time of discovery of the violation. The irrigation entity affected shall have a right to claim such expenses in a civil action.

(3) In any civil action filed under subsection (1) or (2) of this section, the prevailing party shall be awarded its reasonable costs and attorney's fees. The purchaser and irrigation entity shall have two (2) years from the date of discovery of the violation to initiate any legal action. [I.C., § 31-3806, as added by am. 1990, ch. 365, § 3, p. 977; am. 1996, ch. 51, § 2, p. 152; am. 1996, ch. 399, § 2, p. 1330; am. 1997, ch. 148, § 2, p. 423.]

### STATUTORY NOTES

**Prior Laws.** — Former § 31-3806 which comprised I.C., 31-3806, as added by 1976, ch. 153, § 2, p. 547, was repealed by S.L. 1990, ch. 365, § 2, effective July 1, 1990.

**Amendments.** — This section was amended by two 1996 acts — ch. 51, § 2, effective July 1, 1996, and ch. 399, § 2, effective March 20, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 51, § 2, substituted "entity" for "district" throughout the section.

The 1996 amendment, by ch. 399, § 2, substituted "entity" for "district" throughout

the section; in subsection (1), inserted "amendment to a subdivision plat or record of survey" following both occurrences of "subdivision plat", substituted "either subsection (1) or (2)" for "either subsection (1)(a) or (1)(b), and substituted "or" for "of" following "due and owing"; in subsection (2), substituted "subsection (2)" for "subsections (2)(a) and (2)(b)"; and in subsection (3), substituted "attorney's fees. The" for "attorney's fees and the".

**Effective Dates.** — Section 3 of S.L. 1996, ch. 399 declared an emergency. Approved March 20, 1996.

## CHAPTER 39

### AMBULANCE SERVICE

#### SECTION.

- 31-3901. Authorization to establish ambulance service — Special levy.
- 31-3902. County treasurers to establish ambulance service fund.
- 31-3903. Ambulance service — Powers and duties of board of county commissioners.
- 31-3904. Ambulance service — Fees.
- 31-3905. Ambulance service — Operation dependent upon resolution of each city — Right to tax unaffected by nonservice.

#### SECTION.

- 31-3906. Ambulance service — Adjacent counties and/or private individuals and corporations may have cooperative agreement.
- 31-3907. Ambulance service — Termination of.
- 31-3908. Ambulance district authorized.
- 31-3908A. Exemptions from taxation.
- 31-3909. Immunity of ambulance attendant.
- 31-3910. Consent for emergency medical treatment.

**31-3901. Authorization to establish ambulance service — Special levy.** — The boards of county commissioners in the several counties are hereby authorized, whenever existing ambulance service is not reasonably available to the inhabitants of the county or any portion thereof, to procure an ambulance and pay for the same out of any funds available and to

establish an ambulance service to serve the areas, which do not have an existing ambulance service reasonably available, both within and outside the cities and villages in their respective counties, and to levy a special tax not to exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property within the county to support the same. Providing ambulance service is a governmental function. [1963, ch. 278, § 1, p. 712; am. 1965, ch. 61, § 1, p. 96; am. 1967, ch. 147, § 1, p. 333; am. 1976, ch. 289, § 1, p. 996; am. 1995, ch. 82, § 7, p. 218.]

**31-3902. County treasurers to establish ambulance service fund.**

— The county treasurer of each county in which an ambulance service has been established pursuant to this act shall establish a fund to be designated as the ambulance service fund, and used exclusively for the purposes of this act. [1963, ch. 278, § 2, p. 712.]

**STATUTORY NOTES**

**Compiler's Notes.** — The words "this act" refer to S.L. 1963, ch. 278, §§ 1-8, p. 712, compiled as §§ 31-3901 — 31-3907.

**31-3903. Ambulance service — Powers and duties of board of county commissioners.** — The board of county commissioners shall determine the manner in which said ambulance service shall be operated, and is empowered to make expenditures from the ambulance service fund for the purchase or lease of real property and the construction of buildings necessary in connection with said service, to acquire necessary equipment for the operation and maintenance of said service, and to pay necessary salaries. [1963, ch. 278, § 3, p. 712.]

**31-3904. Ambulance service — Fees.** — The board of county commissioners shall adopt a schedule of fees to be charged for the use of said ambulance service. All such fees shall be collected, accounted for and paid to the county treasurer for deposit in the ambulance service fund, and shall be used to pay expenses as incurred in the maintenance and operation of said ambulance service. [1963, ch. 278, § 4, p. 712.]

**31-3905. Ambulance service — Operation dependent upon resolution of each city — Right to tax unaffected by nonservice.** — All cities and villages within the county, upon resolution duly passed and approved and presented to the board of county commissioners, may authorize said ambulance service to operate within the boundaries of said city or village, but the failure of any such governing body to authorize said ambulance service to operate within the limits and of said village or city, shall not affect the right of the board of county commissioners to levy the tax as hereinbefore provided. [1963, ch. 278, § 5, p. 712.]

**31-3906. Ambulance service — Adjacent counties and/or private individuals and corporations may have cooperative agreement. —**

The board of county commissioners of any county wherein such ambulance service has been established is authorized in its discretion and under such terms and conditions as it deems appropriate to enter into a cooperative agreement with adjacent counties and for private individuals and corporations to provide ambulance service for such county or counties or a portion thereof. All cost of said service shall be apportioned equitably among the participating counties as determined by their respective boards of county commissioners. [1963, ch. 278, § 6, p. 712; 1967, ch. 147, § 2, p. 333.]

**STATUTORY NOTES**

**Effective Dates.** — Section 3 of S.L. 1967, ch. 147 declared an emergency. Approved March 20, 1967.

**31-3907. Ambulance service — Termination of. —** Any county having adopted and established an ambulance service as provided in this act, may terminate the same for good cause by the adoption of a resolution by the board of county commissioners. Upon the termination of said ambulance service, all vehicles and property not necessary for other county purposes shall be sold and the proceeds therefrom paid to the county treasurer to be deposited in the general fund of the county. All moneys on deposit in the ambulance service fund shall be transferred to the general fund of the county. [1963, ch. 278, § 7, p. 712.]

**STATUTORY NOTES**

**Compiler's Notes.** — For words "this act," ch. 278 declared an emergency. Approved see Compiler's notes, § 31-3902. March 27, 1963.

**Effective Dates.** — Section 8 of S.L. 1963,

**31-3908. Ambulance district authorized. —** (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) qualified electors of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain an ambulance service district within the county as may be designated in the petition.

(a) A petition to form an ambulance service district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.

(b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.



(c) Upon receipt of a duly certified petition the board of county commissioners shall cause the text of the petition to be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation within the county. With the publication of the petition there shall be published a notice of the time of the meeting of the board of county commissioners when the petition will be considered stating that all persons interested may appear and be heard. No more than five (5) names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated.

At the time of filing the petition the sponsors thereof shall cause to be deposited with the county clerk a sufficient sum of money to cover the cost of publication of the petition and all necessary notices. If the petition and notices are not published the deposit shall be returned to whomever deposited the funds, and if there is any surplus remaining after paying for the publication as herein provided it shall be returned to the original depositors, and if a district is created the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

(d) At the time set for hearing the petition, the board of county commissioners shall hear all persons who desire to be heard relative to the creation of an ambulance service district. The board of county commissioners may, if they so desire and it appears desirable, adjourn the meeting for not to exceed thirty (30) days in time to further hear the petitioners and protestants, if any. After the hearing or hearings, the board of county commissioners shall adopt a resolution either creating the proposed ambulance service district or denying the petition. When the board of county commissioners creates an ambulance service district the board shall adopt a resolution describing the boundaries of the district.

(e) When the board of county commissioners adopts the resolution creating the ambulance service district, the board shall include in the resolution the name of the district, and file a copy of the order creating the district with the county clerk and recorder, for which the clerk shall receive a fee of three dollars (\$3.00).

(f) Procedures for annexation, deannexation, or dissolution of a district created pursuant to this section shall be in substantial compliance with the provisions for public notice and hearing provided herein, and shall be by resolution adopted by the board of county commissioners.

(2) When the board of county commissioners has ordered the creation of an ambulance service district, pursuant to the provisions of this section, such district is hereby recognized as a legal taxing district, and providing ambulance service is a governmental function.

(3) The board of county commissioners shall be the governing board of an ambulance service district created pursuant to this section, and shall exercise the duties and responsibilities provided in chapter 39, title 31, Idaho Code.

(4) In any county where an ambulance service district is created as provided herein, the board of county commissioners is authorized to levy a special tax, not to exceed four-hundredths percent (.04%) of market value for

assessment purposes, except as authorized by subsection (a) below, upon all taxable property within the district for the purposes of the district, but the levy otherwise authorized in section 31-3901, Idaho Code, shall not be made on taxable property within the district.

(a) In any county where an ambulance service district has been created as of January 1, 1976, and the market value for assessment purposes of the district is less than three hundred million dollars (\$300,000,000), the board of county commissioners is authorized to levy a special tax, not to exceed ten-hundredths percent (.10%) of market value for assessment purposes, upon all taxable property within the district for the purposes of the district, but the levy otherwise authorized in section 31-3901, Idaho Code, shall not be made on taxable property within the district.

(5) The board of county commissioners is authorized by resolution to create an ambulance district capital improvement account. The board may dedicate all or a portion of the fees and taxes collected pursuant to this chapter to the capital improvement account for the purpose of purchasing necessary buildings, land or equipment for the operation of the district. The board is further authorized to carry over and add to the funds in the account from year to year in order to make the purchases authorized by this subsection. [I.C., § 31-3908, as added by 1975, ch. 258, § 1, p. 703; am. 1976, ch. 289, § 2, p. 996; am. 1980, ch. 350, § 9, p. 887; am. 1981, ch. 288, § 1, p. 593; am. 1994, ch. 34, § 1, p. 51; am. 1994, ch. 52, § 1, p. 90.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1994 acts — ch. 34, § 1, and ch. 52, § 1, both effective July 1, 1994 — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 34, § 1, added subsection (5).

The 1994 amendment, by ch. 52, § 1, substituted “three hundred million dollars (\$300,000,000)” for “two hundred million dollars (\$200,000,000)” in subdivision (4)(a).

**31-3908A. Exemptions from taxation.** — The board of county commissioners, upon application, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(b), Idaho Code, as if the ordinance were making a zoning district boundary change. [I.C., § 31-3908A, as added by 1996, ch. 152, § 1, p. 491.]

**31-3909. Immunity of ambulance attendant.** — No action shall lie or be maintained for civil damages in any court of this state against any person or person[s], or group of persons, including ambulance attendants employed

by an ambulance service district, who offers and administers first aid or emergency medical attention as a part of his normal duty as an ambulance attendant to any person or person[s] utilizing the services and facilities of an ambulance service district, unless it can be shown that the person or persons offering or administering first aid or emergency medical attention is guilty of gross negligence in the care or treatment offered or administered, or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured or treated person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said ill or injured person or persons. [I.C., § 31-3909, as added by 1976, ch. 289, § 3, p. 996.]

#### STATUTORY NOTES

**Compiler's Notes.** — The bracketed letter "s", in the first sentence, was inserted by the compiler.

**Effective Dates.** — Section 4 of S.L. 1976,

ch. 289 declared an emergency and provided the act should become effective on approval retroactive to January 1, 1976. Approved March 31, 1976.

#### RESEARCH REFERENCES

**A.L.R.** — Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

**31-3910. Consent for emergency medical treatment.** — The authorization or refusal of consent for emergency medical treatment under chapter 39, title 31, Idaho Code, shall be governed by chapter 45, title 39, Idaho Code. [I.C., § 31-3910, as added by 1976, ch. 318, § 2, p. 1089; am. 2005, ch. 120, § 4, p. 380.]

### CHAPTER 40

#### EXPENDITURES AND BIDS

##### SECTION.

31-4001 — 31-4015. [Repealed.]

**31-4001 — 31-4015. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — The following sections were repealed by S.L. 2005, ch. 213, § 2: 31-4001. Applicability. [1963, ch. 124, § 1, p. 354.]

31-4002. Expenditure defined. [1963, ch. 124, § 2, p. 354; am. 1984, ch. 136, § 2, p. 321; am. 1995, ch. 171, § 1, p. 653; am. 1996, ch. 92, § 1, p. 276.]

31-4003. Expenditures for which bids required. [1963, ch. 124, § 3, p. 354; am. 1975, ch. 34, § 2, p. 60; am. 1983, ch. 89, § 1, p. 185; am. 1989, ch. 98, § 1, p. 227; am. 1996, ch. 92,

§ 2, p. 276; am. 1998, ch. 397, § 1, p. 1241.]

31-4004. Notice inviting bids — Contents — Publication. [1963, ch. 124, § 4, p. 354; am. 1989, ch. 98, § 2, p. 227; am. 1992, ch. 6, § 1, p. 10; am. 2004, ch. 111, § 1, p. 385.]

31-4005. Bids — Presentation — Bidder's security. [1963, ch. 124, § 5, p. 354; am. 1996, ch. 92, § 3, p. 276.]

31-4006. Bidder's security — Amount — Requirement of bids. [1963, ch. 124, § 6, p. 354; am. 1965, ch. 257, § 1, p. 657; am. 1996, ch. 92, § 4, p. 276.]



31-4007. Withdrawal of bids — Date of opening — Open to public — Award. [1963, ch. 124, § 7, p. 354.]

31-4008. Forfeiture of bidder's security. [1963, ch. 124, § 8, p. 354.]

31-4009. Deposit of bidder's security — Deposit. [1963, ch. 124, § 9, p. 354; am. 1989, ch. 98, § 3, p. 227.]

31-4010. Award to next lowest bidder — Application of original bidder's security on forfeiture — Return. [1963, ch. 124, § 10, p. 354.]

31-4011. Rejection of bids — Readvertisement — Identical bids — Effect

when no bids received. [1963, ch. 124, § 11, p. 354.]

31-4012. Expenditures accomplished after rejection of bids. [1963, ch. 124, § 12, p. 354.]

31-4013. Calamity — Emergency — Expenditures. [1963, ch. 124, § 13, p. 354; am. 1981, ch. 289, § 1, p. 595.]

31-4014. Joint purchasing agreements. [I.C., § 31-4014, as added by 1995, ch. 171, § 2, p. 653.]

31-4015. Joint purchasing program. [I.C., § 31-4015, as added by 1995, ch. 171, § 3, p. 653.]

For purchasing by political subdivisions, see § 67-2801 et seq.

## CHAPTER 41

### TELEVISION TRANSLATOR STATIONS

#### SECTION.

31-4101. Definitions.

31-4102. Translator district — Purposes.

31-4103. Organizational area.

31-4104. District area.

31-4105. Petition to form district.

31-4106. Filing of petition.

31-4107. Notice — Text of petition published in newspaper — Sponsors pay cost.

31-4108. Hearing — Resolution adopted — Description and finding.

31-4109. Name of district — Filed with county clerk — Fees.

31-4110. Board of trustees — Appointment — Term.

31-4111. [Repealed.]

31-4112. Budget — Special assessment.

#### SECTION.

31-4113. Treasurer for district — Handling of funds — Qualification and duty.

31-4114. Powers and duties.

31-4115. Expenses — Limitation.

31-4116. Compensation.

31-4117. Exemptions from tax assessment.

31-4118. Meetings — Open to public — Place.

31-4119. Fraudulent exemption claim — Penalty.

31-4120. Petition for abandonment — Assets deposited in county general fund.

31-4121. Alteration and annexation of translator district boundaries — Procedure.

### **31-4101. Definitions.** — As used in this act the term:

1. "Service unit" means any structure inhabited by human beings for dwelling purposes and shall include each home, each apartment within a structure, and each unit within a motel or hotel structure or complex and shall include any establishment which sells, rents, leases to or maintains on the premise for the enjoyment of their customers electronic equipment which receives translator signals.

2. "Translator" means any facility within this state which is operated to receive and amplify the signals broadcast by one or more television stations and redistribute the signals by appropriate broadcasting means but shall not include redistribution of signals by wire or cable. [1969, ch. 308, § 1, p. 944.]

## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1969, ch. 308, compiled as §§ 31-4101 — 31-4121.

**31-4102. Translator district — Purposes.** — The purposes of a translator district shall be to serve the public interest, convenience, and necessity in the construction, maintenance and operation of translator stations and any system necessary thereto by appropriate electronic means for television program distribution, but the purposes are not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems. Translator districts organized prior to January 1, 1977, may, in addition to other powers conferred by this chapter, receive and broadcast FM radio signals by appropriate electronic means. [1969, ch. 308, § 2, p. 944; am. 1977, ch. 245, § 1, p. 722.]

**31-4103. Organizational area.** — Any area of the state may organize as a translator district for the performance of functions provided for in this act. [1969, ch. 308, § 3, p. 944.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

**31-4104. District area.** — A translator district may include a part or all of any county or may include areas in more than one (1) county and may include any municipality located within the county or counties. [1969, ch. 308, § 4, p. 944.]

**31-4105. Petition to form district.** — A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by a number of not less than sixty per cent (60%) of the resident real property owners within the proposed district. The petition shall state the objects of the district and designate the boundaries thereof by section, the approximate number of service units to be benefited thereby and shall contain a brief description of the proposed system including type of construction, location, approximate cost of the installation. The petition shall also state that the proposed district will be conducive to the public interest, convenience and necessity. It shall request that the area described within the petition be organized as a translator district. [1969, ch. 308, § 5, p. 944.]

**31-4106. Filing of petition.** — The petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one (1) county clerk and recorder each petition shall state the number of signing petitioners and the name of the county where the greater number of petitioners reside. Upon the filing of the petition or petitions the county clerk and recorder shall examine the petition and certify whether the required number of petitioners have signed the petition. In the event more than one (1) county is involved, the county or counties that have the fewer number of petitioners shall transmit the petition to the county clerk and recorder of the county

containing the greater number of petitioners. The county clerk and recorder in the county containing the greater number of petitioners, shall, within thirty (30) days following the receipt of the petitions, transmit the petitions to the board of county commissioners of the county in which the greatest number of petitioners reside, together with his certificate, and the certificates of any other county clerk and recorder as to the sufficiency of the petition. [1969, ch. 308, § 6, p. 944.]

**31-4107. Notice — Text of petition published in newspaper — Sponsors pay cost.** — Upon receipt of a duly certified petition the board of county commissioners shall cause the text of the petition to be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation within the county where the petition is presented. If any portion of the proposed district lies in another county the petition and notice shall likewise be published in that county. No more than five (5) names attached to the petition shall appear in the publication and notice but the number of signatures shall be stated. With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered stating that all persons interested may appear and be heard.

At the time of filing the petition the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all necessary notices. If the notices are not published the deposit shall be returned to whomsoever deposited the funds and if there is any surplus remaining after paying for the publication as herein provided it shall be returned to the original depositor or depositors and if a district is created the fees so expended are an obligation of the district and shall be repaid by the district to the depositors. [1969, ch. 308, § 7, p. 944.] •

**31-4108. Hearing — Resolution adopted — Description and finding.** — At the time set for hearing the petition or petitions the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a translator district. The board of county commissioners may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed thirty (30) days in time to further hear the petitioners and protestants, if any. After the hearing or hearings the board of county commissioners shall adopt a resolution either creating the proposed translator district or denying the petition. When the board of county commissioners creates the translator district they shall adopt a resolution describing the proposed system and describing the boundaries of the district, including type of construction, location, type and approximate cost of the installation and finding that the district will be conducive to the public interest and convenience and thereby the district shall be created. [1969, ch. 308, § 8, p. 944.]

**31-4109. Name of district — Filed with county clerk — Fees.** — When the board of county commissioners passes the resolution creating the



district they shall name the district "Translator District" and file a copy of the order creating the district, if only one (1) county is included therein, with the county clerk and recorder for which the county clerk and recorder shall receive a fee of three dollars (\$3.00) and if portions of more than one (1) county are included in the district a copy of the order shall be filed in each county and with the secretary of state for which he shall receive a fee of five dollars (\$5.00). [1969, ch. 308, § 9, p. 944.]

**31-4110. Board of trustees — Appointment — Term.** — The board of county commissioners, on the creation of the district, and as part of the order creating the district, shall appoint a board of not less than five (5) nor more than nine (9) trustees to administer the affairs of the district. Each of the trustees shall be a resident real property owner from within the translator district. The trustees appointed at the time of the creation of the district shall be appointed for staggered terms of one (1), two (2), and three (3) years in the discretion of the board of county commissioners and if more than one (1) county is involved, at least one (1) of the trustees shall be appointed from each county or portion of county included within the district. The trustees appointed at the time of formation of the district shall hold office for the term of their respective appointment or until his successor is appointed and qualified; at the end of the respective terms of the trustee, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in the event of a vacancy by death, resignation, removal from the district or otherwise, a trustee shall be appointed by the board of county commissioners to fill the vacancy to the end of the term of the trustee causing the vacancy. [1969, ch. 308, § 10, p. 944.]

**31-4111. List of property owed within district. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised 1969, ch. 308, § 11, p. 944, was repealed by S.L. 1989, ch. 232, § 2.

**31-4112. Budget — Special assessment.** — The board of trustees shall, from the list prepared by the county assessor or assessors, remove therefrom the names of any persons and their property who have claimed exemption under this act and shall prepare a budget for the expenses for the next year, the budget together with the list of real property owners within the district and the number of service units located on each parcel of real property subject to the special assessment after all exemptions have been allowed as provided in this act shall be presented by September first to the board or boards of county commissioners of the counties, in whole or in part within the district, who shall levy the assessment on service units found within their county as requested by the trustees; provided however, the assessment shall not exceed the sum of thirty dollars (\$30.00) per annum per service unit and in the event there is more than one (1) service unit located upon the parcel of real property, for example, but not limited to, a

motel, hotel, or apartment structure or complex, the second and all subsequent service units' assessments shall be at the rate of twenty per cent (20%) of the assessment made for that year on the first service unit assessed. The board of county commissioners shall levy the assessment in accordance with the request herein mentioned and the assessment shall be certified and collected in the same manner provided by law for the collection of real property taxes. [1969, ch. 308, § 12, p. 944; am. 1994, ch. 279, § 1, p. 866.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

**31-4113. Treasurer for district — Handling of funds — Qualification and duty.** — The board of trustees of the district shall appoint a treasurer, who may be bonded, to receive funds paid over by the county treasurer to the treasurer of the television translator district, who shall deposit the same in a bank and be handled in the manner prescribed by the state depository law and all other funds received by or on behalf of the district, shall be deposited by the treasurer to the credit of the district funds. [1969, ch. 308, § 13, p. 944; am. 1986, ch. 94, § 1, p. 272.]

**31-4114. Powers and duties.** — A translator district organized under this act, acting through its board of trustees may:

a. Perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within the service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, but may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems; the authorized system to provide such flexibility as to permit improvements in technical quality;

b. If necessary or proper in the furtherance of the objects of this act, acquire, build, construct, repair, own, maintain and operate any necessary stations transmitting simultaneous signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary;

c. Make contracts to compensate any owner of land or other property for the use of such property for the purposes of this act;

d. Make contracts with the United States, or any state, municipality or any department or agency of those entities for carrying out the general purposes for which the district is formed;

e. Acquire by gift, devise, bequest, lease, purchase, or eminent domain real and personal property, tangible or intangible, including lands, rights of way and easements, necessary or convenient for its purposes;

f. To make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this act;

g. Prescribe assessment rates for the providing of services throughout the area in accordance with the provisions of this act;

h. And, apply for, accept, and be the holder of any permit or license issued by or required under federal or state law. [1969, ch. 308, § 14, p. 944.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

The words in parentheses so appeared in the law as enacted.

**31-4115. Expenses — Limitation.** — Each translator district shall be liable for and shall pay to each county in which they are situated, the actual expense to the county in performing the duties required by its officers under the provisions of this act; in no event shall this amount exceed ten per cent (10%) of the amount of assessments collected in the county. [1969, ch. 308, § 15, p. 944.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

**31-4116. Compensation.** — The board of trustees of the district shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the operation of the translator district. [1969, ch. 308, § 16, p. 944.]

**31-4117. Exemptions from tax assessment.** — The real property owners of service units within the translator district who do not receive the signal of the translator station or who receive direct reception from the station from which the translator repeats a signal or receive service through the medium of a community antenna system on which they are subscribers in good standing, shall be exempt from the payment of the tax for the support of the translator district provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed with the board of trustees who shall upon the receipt of the affidavit have the names of the persons and their property, so exempted from the assessment, stricken from the list certified to the board of county commissioners and shall not be liable for the assessment. This exemption shall only be effective as long as the property owner filing the affidavit continues to meet the above stated grounds for exemption. [1969, ch. 308, § 17, p. 944.]

**31-4118. Meetings — Open to public — Place.** — The board of trustees shall meet once a month at a regular time and place to transact the business of the district, the time and place to be fixed by the trustees and any change in the time and place of meetings shall be given by publication of notice in a newspaper most likely to give notice to the taxpayers within the district. All the meetings shall be open in their entirety to the public and all meetings shall be held at some place within the area of the television district. [1969, ch. 308, § 18, p. 944.]



**31-4119. Fraudulent exemption claim — Penalty.** — Any person or persons who shall make a false or fraudulent claim for exemption as provided in this act shall be guilty of a misdemeanor. [1969, ch. 308, § 19, p. 944.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

**31-4120. Petition for abandonment — Assets deposited in county general fund.** — If at any time a petition for abandonment of the translator district, signed by not less than sixty per cent (60%) of the resident owners of real property within the district, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district, and the board or boards of county commissioners shall by resolution immediately declare the district abandoned. All properties and moneys remaining after the satisfaction of all debts and obligation of the abandoned district shall be deposited to the credit of the general fund of the county; and if the abandoned district embraced areas in more than one (1) county, properties and moneys remaining after the satisfaction of all debts and obligation of the abandoned district shall be deposited to the credit of the general funds of the counties in proportion to the number of living units in each county which were served by the district. [1969, ch. 308, § 20, p. 944.]

**31-4121. Alteration and annexation of translator district boundaries — Procedure.** — The boundaries of a translator district created by authority of this act, may be altered and outlying areas be annexed from territory contiguous to the district in the following manner:

a. A petition shall be signed by resident real property owners within the proposed area, equal in number to not less than sixty per cent (60%), within the area to be annexed;

b. The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing translator district;

c. The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 6 through 8 [ §§ 31-4106 through 31-4108 ] of this act;

d. After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition. [1969, ch. 308, § 21, p. 944.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4101.

The bracketed reference " §§ 31-4106 through 31-4108 ", in subsection c., was inserted by the compiler.

**Effective Dates.** — Section 22 of S.L. 1969, ch. 308 declared an emergency. Approved March 27, 1969.

## CHAPTER 42

## COUNTY HOUSING AUTHORITIES AND COOPERATION LAW

## SECTION.

- 31-4201. Short title.
- 31-4202. Declaration of governmental function.
- 31-4203. Definitions.
- 31-4204. Powers of authority.
- 31-4205. Creation of housing authorities.
- 31-4206. Termination of authority.
- 31-4207. Aid and cooperation from other state public bodies — Acts authorized.
- 31-4208. Property of authority public — Exemption — Payment for services.
- 31-4209. Donations by county.
- 31-4210. Commissioners — Appointment — Qualifications — Tenure.
- 31-4211. Removal of commissioners.
- 31-4212. Policy in operation of authority.
- 31-4213. Duties regarding rentals and tenant selection.
- 31-4214. Eminent domain.
- 31-4215. Housing projects subject to planning, zoning, sanitary and building laws.
- 31-4216. Bond issues.

## SECTION.

- 31-4217. Issuance of bonds — Terms — Negotiable — Actions to test validity — Conclusive presumptions.
- 31-4218. Powers to secure payment of bonds.
- 31-4219. Submission of bond issue to attorney general — Certification of validity.
- 31-4220. Rights of obligees — Mandamus — Injunction.
- 31-4221. Filing of minutes and reports.
- 31-4222. Real property of authority — Exempt from execution, other judicial process and judgment lien.
- 31-4223. Additional powers of authority — Loans, contributions, grants and assistance from federal government.
- 31-4224. Limitations on power of authority.
- 31-4225. Provisions for default — Rights of obligees.
- 31-4226. Inconsistent provisions of other laws.

**31-4201. Short title.** — The provisions of sections 1 through 26 [this chapter] of this act may be referred to as the “County Housing Authorities and Cooperation Law.” [1970, ch. 211, § 1, p. 584.]

## STATUTORY NOTES

**Cross References.** — Housing authorities and cooperation law for cities, §§ 50-1901 — 50-1927.

Idaho Housing and Finance Association, §§ 67-6201 — 67-6226.

**Compiler's Notes.** — The bracketed words “this chapter” were inserted by the compiler.

**31-4202. Declaration of governmental function.** — It is hereby declared:

(a) That there exist in this state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(b) That these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise;

(c) That the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions. [1970, ch. 211, § 2, p. 584.]

### STATUTORY NOTES

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

### RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Subdivisions, §§ 402-404, 502.  
Corporations, Counties, and Other Political **C.J.S.** — 20 C.J.S., Counties, §§ 145-149.

**31-4203. Definitions.** — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" shall mean any of the public corporations created by section 31-4205, Idaho Code.

(b) "Housing project" shall mean any work or undertaking:

(1) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or

(2) To provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, roads, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or

(3) To accomplish a combination of the foregoing.

The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; to buildings, and the land, equipment, facilities and other real or personal property, which do not contain dwelling units or other living accommodations for persons of low income when such buildings are utilized for administrative, community, health, recreational, welfare or other purposes by or for low-income persons or senior citizens, and redevelopment projects carried out by an authority at the request of local government when such



projects include dwelling units which are sold or rented to persons of low income.

(c) "Governing body" shall mean the council, board of commissioners, board of trustees or other body having charge of the fiscal affairs of the state public body.

(d) "Federal government" shall include the United States of America, the United States department of housing and urban development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "County" or "counties" shall include all counties in the state of Idaho as designated in chapter 1, title 31, Idaho Code.

(f) "Clerk" shall mean the county clerk or the officer charged with the duties customarily imposed on such clerk.

(g) "Area of operation" shall mean the entire county except within the corporate limits of cities in the county which have presently, or hereafter create, a housing authority under title 50, chapter 19, Idaho Code; provided however, that a county housing authority may continue to own and operate any housing project for which it has become financially obligated which is located in a city that subsequently creates a housing authority or is located in an area annexed by a city that has created or subsequently creates a housing authority.

(h) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(i) "Person of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

(j) "Bonds" shall mean any bonds, notes, interim certificates, debentures or other obligations issued by an authority pursuant to this chapter.

(k) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(l) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessors demising, to the authority, property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority. [1970, ch. 211, § 3, p. 584; am. 2001, ch. 260, § 1, p. 935.]

**31-4204. Powers of authority.** — A housing authority shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority, including the power to contract with other housing authorities for services; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(b) Within the area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this chapter or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance; to rent or sell and to agree to rent or sell dwellings forming part of the housing projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which banks may legally invest funds, subject to the control of the housing authority; to purchase its own bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be canceled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such

conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one (1) or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof, under oath, at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available, to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation), its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(i) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing or refinancing of land, buildings or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(j) Any housing project shall be subject to the requirement that the dwelling units made available to persons of low income, together with functionally related and subordinate facilities, shall occupy at least thirty percent (30%) of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent (50%) of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile or manufactured home parks, the mobile or manufactured home lots made available to persons of low income shall be at least fifty percent (50%) of the total number of mobile or manufactured home lots in the park.

(k) To exercise all or any part or combination of powers herein granted. [1970, ch. 211, § 4, p. 584; am. 1998, ch. 367, § 1, p. 1146; am. 2001, ch. 260, § 2, p. 935.]



## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1970, ch. 211, compiled as §§ 31-4201 — 31-4226. The words in parentheses so appeared in the law as enacted.

**31-4205. Creation of housing authorities.** — In any county of the state of Idaho, there may be created an independent public body corporate and politic to be known as a housing authority, which shall not be an agency of the county; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the county, by proper resolution, shall declare, at any time hereafter, that there is need for an authority to function in such county. The determination as to whether or not there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the county asserting that there is need for an authority to function in such county and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the county if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such county or (b) that there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income or rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary, said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities and the extent to which conditions exist in such building which endanger life or property by fire or other causes.

Nothing in this act shall prevent governing bodies from jointly creating by resolution an independent public body corporate and politic to carry out and effectuate the purposes and provisions of this act and to serve the best interests of their respective citizenry.

In any suit, action or proceeding, involving the validity of enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms, no further detail being necessary, that either or both of the above enumerated conditions exist in the county. A copy of such resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action or proceeding. [1970, ch. 211, § 5, p. 584; am. 1998, ch. 367, § 2, p. 1146.]

**31-4206. Termination of authority.** — The authority shall terminate at such time as the governing body of the county, by proper resolution, shall declare that there is no longer a need for a housing authority to function within such county. The determination that there is no longer a need for

such authority to function (a) may be made by the governing body on its own motion or (b) may be made by the governing body upon motion of the duly appointed and acting commissioners of the authority that they no longer have any need to function within said county.

The governing body of the county shall, however, before adopting a resolu<sup>ti</sup>on [resolution] terminating such authority, determine, by audit if necessary, the financial condition of said authority, and if there is any outstanding liability due and owing by said authority, the county shall provide the necessary funds for satisfaction thereof; if, however, funds are found, over and above such liabilities, the county shall provide for the satisfaction of said liabilities and the balance of the funds shall be accepted by the county and the authority shall be released from their responsibility therefor.

Any funds so received by such county, as a result of the termination of the authority, shall be dedicated to the extension, maintenance and promotion of the public parks system of said county for the benefit and welfare of the county. [1970, ch. 211, § 6, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — The bracketed word "resolution" in the second paragraph was inserted by the compiler.

**31-4207. Aid and cooperation from other state public bodies — Acts authorized.** — For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein, to a housing authority or the federal government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such state public body;

(e) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing or [of] unsafe, insanitary or unfit dwellings;

(g) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(h) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this act;

(i) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this section;

(j) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or in the manner of its construction or take any other action relating to such construction. [1970, ch. 211, § 7, p. 584.]

STATUTORY NOTES

**Compiler’s Notes.** — The bracketed word “of” in subdivision (f) was inserted by the compiler. For words “this act,” see Compiler’s notes, § 31-4204.

**31-4208. Property of authority public — Exemption — Payment for services.** — The property of an authority is declared to be public property used for essential public purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof; provided, however, that in lieu of such taxes, an authority may agree to make payments to the county for improvements, services and facilities furnished by such county for the benefit of a housing project, or in lieu of such taxes, an authority may agree to make payments to a school district or school districts, which district or districts include within its boundaries all or a portion of the real property of an authority, for school services and facilities furnished by said school district or districts, for the benefit of the residents of a housing project. [1970, ch. 211, § 8, p. 584.]

RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 402, 502. **C.J.S.** — 20 C.J.S., Counties, § 143 et seq.

**31-4209. Donations by county.** — Any county, in which a housing authority has been created, shall have the power, from time to time, to lend or donate money to such authority or to agree to take such action; provided, however, that when a housing authority has the money available therefor it shall make reimbursement for all such loans made to it. [1970, ch. 211, § 9, p. 584; am. 2001, ch. 260, § 3, p. 935.]

**31-4210. Commissioners — Appointment — Qualifications — Tenure.** — When a governing body of a county adopts a resolution as aforesaid, it shall appoint five (5) or seven (7) persons as commissioners of the



authority created for said county. Commissioners of the authority shall serve terms of five (5) years. If the governing body of a county appoints five (5) persons as commissioners of the authority, the commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, except that all vacancies shall be filled for the unexpired term. If the governing body of a county appoints seven (7) persons as commissioners of the authority, the commissioners who are first appointed shall be designated to serve terms as follows: one (1) commissioner for a one (1) year term, two (2) commissioners for two (2) year terms, two (2) commissioners for three (3) year terms, one (1) commissioner for a four (4) year term and one (1) commissioner for a five (5) year term, except that all vacancies shall be filled for the unexpired term. Upon resolution by a governing body of a county, after an authority has been created with either five (5) or seven (7) commissioners, the number of commissioners may be increased from five (5) to seven (7) or reduced from seven (7) to five (5). No commissioner of any authority may be an officer or employee of the county for which the authority is created. A commissioner shall hold office until his successor has been appointed and qualified. A certificate of appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The service of a housing assistance recipient appointed as a commissioner pursuant to 42 U.S.C. section 1437(b) shall be contingent upon his continued receipt of housing assistance. A commissioner shall receive no compensation for his services for the authority in any capacity, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners. A majority of the appointed commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The bylaws of the authority shall designate which of the commissioners appointed shall be the first chairman and such chairman shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman of the authority thereafter becomes vacant, the commissioners shall select a chairman from their number, a vice chairman, and may employ a secretary, an executive director who shall serve as an at-will employee of the commissioners, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the prosecuting attorney of the county or may employ its own counsel and legal staff. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper. [1970, ch. 211, § 10, p. 584; am. 1998, ch. 367, § 3, p. 1146; am. 2001, ch. 257, § 1, p. 923.]

**31-4211. Removal of commissioners.** — A commissioner of an authority may be removed by a majority of the county commissioners at any time,

with or without cause. The county commissioners shall cause to be sent a notice of the removal to the commissioner removed, the authority and the clerk. [1970, ch. 211, § 11, p. 584; am. 1998, ch. 367, § 4, p. 1146.]

**31-4212. Policy in operation of authority.** — It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing adequate, safe and sanitary accommodations, and no housing authority shall construct or operate any such project for profit or as a source of revenue to the county. An authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenue which, together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived, will be sufficient:

- (a) to pay, as the same become due, the principal and interest on the bonds of the authority;
- (b) to meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and
- (c) to create, during not less than the six (6) years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one (1) year thereafter and to maintain such reserve. [1970, ch. 211, § 12, p. 584.]

**31-4213. Duties regarding rentals and tenant selection.** — In the operation or management of housing projects, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

- (a) it may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;
- (b) it may rent or lease dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding.

Nothing contained in this or the preceding section shall be construed as limiting the power of authority to vest, in an obligee, the right, in the event of a default by the authority, to take possession, during the period of such default, of a housing project or cause the appointment of a receiver thereof, free from all restrictions imposed by this or the preceding section. [1970, ch. 211, § 13, p. 584.]

**31-4214. Eminent domain.** — An authority shall have the right to acquire, by the exercise of the power of eminent domain, any real property which it may deem necessary for its purposes under this act after the adoption of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise

the power of eminent domain in the manner provided in chapter 7, title 7, Idaho Code, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to a city, the state or any political subdivision thereof may be acquired without its consent. [1970, ch. 211, § 14, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4215. Housing projects subject to planning, zoning, sanitary and building laws.** — All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions. [1970, ch. 211, § 15, p. 584.]

**31-4216. Bond issues.** — An authority shall have power to issue bonds, from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of this chapter, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenue of a housing project financed with the proceeds of such bonds; or

(b) Exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project; or

(c) From all or part of its revenues or assets generally.

Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice thereof.

Neither the commissioners of any authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority shall state on their face that they shall not be a debt of the county, the state or any political subdivision thereof and neither the county, the state nor any political



subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of said authority. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. [1970, ch. 211, § 16, p. 584; am. 2001, ch. 260, § 4, p. 935.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4217. Issuance of bonds — Terms — Negotiable — Actions to test validity — Conclusive presumptions.** — Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates as the authority shall approve, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium as such resolution, its trust indenture, or the bonds so issued, may provide.

The bonds may be sold at public or private sale at not less than par.

In case any of the commissioners or officers of the authority, whose signatures appear on any bonds or coupons, shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action or proceedings, involving the validity or enforceability of any bond of an authority or the security thereof, any such bond, reciting, in substance, that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income, shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with purposes and provisions of this act. [1970, ch. 211, § 17, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4218. Powers to secure payment of bonds.** — In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for the redemption and to provide the terms and conditions thereof.

(e) To covenant, subject to the limitations contained in this act, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest, in trustee or trustees or the holders of bonds or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession of any housing project or part thereof, and, so long as said authority shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee, to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants

herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein. [1970, ch. 211, § 18, p. 584; am. 2001, ch. 260, § 5, p. 935.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4219. Submission of bond issue to attorney general — Certification of validity.** — Every housing authority may submit, to the attorney general of the state, any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this act and are otherwise regular in form, and if such bonds, when delivered and paid for, will constitute binding and legal obligations of such authority, enforceable according to the terms thereof, the attorney general shall certify, in substance, upon the back of each of said bonds that it is issued in accordance with the constitution and laws of the state of Idaho. [1970, ch. 211, § 19, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4220. Rights of obligees — Mandamus — Injunction.** — An obligee of an authority shall have the right, in addition to all other rights, which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceedings at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority, with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this act.

(b) By suit, action or proceeding in equity, to enjoin any acts which may be unlawful, or the violation of any of the rights of such obligee of said authority. [1970, ch. 211, § 20, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.



**31-4221. Filing of minutes and reports.** — (1) An authority shall file a copy of the minutes of all meetings with the clerk within ten (10) days after their approval by the authority.

(2) At least once a year, an authority shall file a report with the clerk of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

(3) An authority shall file with the clerk a copy of the authority's financial reports, any claims and causes of action against the authority, and the authority's employee policy handbooks and any changes, modifications, or deletions to the handbooks. [1970, ch. 211, § 21, p. 584; am. 1998, ch. 367, § 5, p. 1146.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4222. Real property of authority — Exempt from execution, other judicial process and judgment lien.** — All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues. [1970, ch. 211, § 22, p. 584.]

**31-4223. Additional powers of authority — Loans, contributions, grants and assistance from federal government.** — In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends to (to) comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking[,] construction, maintenance or operation of any housing project by such authority. [1970, ch. 211, § 23, p. 584.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.  
The word "to" was enclosed in parentheses by the compiler as surplusage.  
The bracketed comma was inserted by the compiler.

**31-4224. Limitations on power of authority.** — Nothing in this chapter or any other law shall be construed as authorizing a housing authority to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the county, the state or any subdivision thereof. [1970, ch. 211, § 24, p. 584; am. 2001, ch. 260, § 6, p. 935.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

**31-4225. Provisions for default — Rights of obligees.** — A housing authority shall have power, by its resolution, trust indenture, lease or contract, to confer upon any obligee holding or representing a specified amount in bonds or holding a lease the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as said authority shall continue in default;

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long as said authority shall continue to be in default, operate and maintain the same and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.[]

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. [1970, ch. 211, § 25, p. 584.]

#### STATUTORY NOTES

**Legislative Intent.** — Section 26 of S.L. 1970, ch. 211 read: "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of

this act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

**Compiler's Notes.** — The bracketed semicolon at the end of subdivision (b) was inserted by the compiler.

**31-4226. Inconsistent provisions of other laws.** — Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. [1970, ch. 211, § 27, p. 584.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4204.

## CHAPTER 43

## RECREATION DISTRICTS

## SECTION.

- 31-4301. Short title.
- 31-4302. Declaration of public benefit.
- 31-4303. Definitions.
- 31-4304. Creation of recreation districts.
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- 31-4305. Directors — Qualifications — Vacancy — Compensation — Term.
- 31-4306. Election of directors.
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- 31-4308. Organization of board — Meetings — Inspection of records.
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- 31-4310. President of board — Duties.
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- 31-4315. Claims against district.
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## SECTION.

- 31-4321. Liberal construction.
- 31-4322. Bond issues authorized — Form and terms.
- 31-4323. Creation of indebtedness for works or improvements — Election on proposed indebtedness.
- 31-4324. Notices of election on proposed indebtedness.
- 31-4325. Conduct of election for proposed indebtedness.
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- 31-4326A. Security — Tax levies and sinking fund.
- 31-4327. Recreation district reserve fund.
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- 31-4329. Adoption of budget — Public hearing.
- 31-4330. Notice of hearing — Posting and publication.
- 31-4331. Public inspection.
- 31-4332. Board attendance — Duties.
- 31-4333. Confirmation of elections and sub-district boundaries.

**31-4301. Short title.** — This act shall be known and may be cited as the "recreation district law." [1970, ch. 212, § 1, p. 599.]

## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1970, ch. 212, §§ 1-21, compiled as §§ 31-4301 — 31-4321.

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am.Jur.2d, Municipal Corporations, Counties and other Political Subdivisions, § 500.

**31-4302. Declaration of public benefit.** — Providing adequate recreation facilities for public use is hereby declared to be a public benefit, use and purpose which enhances the value and quality of life and which materially assists in correcting or eliminating many social ills such as



delinquency, crime, excessive use of alcohol, drug abuse and discrimination. [1970, ch. 212, § 2, p. 599.]

**31-4303. Definitions.** — Whenever used in this act the term:

- (a) “county” refers to each county in which all or a portion of a proposed or existing recreation district is situated;
- (b) “county commissioners” means the board of county commissioners of the county;
- (c) “clerk” means the clerk of the board of county commissioners of the county;
- (d) “district” means a proposed or existing recreation district organized under this act;
- (e) “board” means the board of directors of a recreation district;
- (f) “director” means a member of a board of directors of a recreation district;
- (g) “qualified elector” means a person qualified to vote under the general election laws of the state. [1970, ch. 212, § 3, p. 599.]

**STATUTORY NOTES**

**Compiler’s Notes.** — For words “this act,” see Compiler’s notes, § 31-4301.

**31-4304. Creation of recreation districts.** — A recreation district may be created as follows:

(a) Any person or persons may file a petition for the formation of a recreation district with the clerk. Such petition which may be in one (1) or more papers shall clearly designate the boundaries of the proposed district, shall state the name of the proposed district, shall state the maximum tax rate that would be imposed upon taxable property within the district or planned unit development recreation districts, and shall be signed by not less than twenty percent (20%) of the qualified electors resident within the boundaries of the proposed district. The boundaries of the proposed district shall include contiguous territory having market value for assessment purposes of not less than five million dollars (\$5,000,000) at the last preceding county assessment and shall not include any area included within an already existing recreation district. The petition shall be accompanied by a map showing the boundaries of the proposed district.

(b) The clerk shall, within ten (10) days after the filing of such petition and map, estimate the cost of advertising and holding the election provided in this section and notify in writing the person or any one of the persons filing such petition as to the amount of such estimate. Such person or persons shall within twenty (20) days after receipt of such written notice deposit such estimated amount with the clerk in cash, or such petition shall be deemed withdrawn. If the deposit is made and the district is formed, the person or persons so depositing such sum shall be reimbursed from the first moneys collected by the district from the taxes authorized to be levied by this chapter.

(c) Within thirty (30) days after the filing of such petition together with such map and the making of such cash deposit, the county commissioners shall determine whether or not the same substantially comply with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to the effect specifying the particular deficiencies, dismissing such petition and refunding such cash deposit. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to that effect and calling an election, subject to the provisions of section 34-106, Idaho Code, upon the formation of such proposed district as provided in this section.

(d) If the county commissioners order an election as provided in this section, such election shall be conducted in accordance with the general election laws of the state, including the provisions of chapter 14, title 34, Idaho Code. The county commissioners shall establish election precincts, design and print elector's oaths, ballots and other necessary supplies, appoint election personnel and by rule and regulation provide for the conduct and tally of such election. Each qualified elector who is a resident of the proposed district shall be entitled to vote in such election. The clerk shall give notice of such election which notice shall clearly designate the boundaries of such proposed district, shall state the name of the proposed district as designated in the petition, shall state the date of such election and the hours on such date which the polls will be open for receipt of ballots, shall set forth the qualifications of electors, and shall state that a map showing the boundaries of such district is on file in the office of the clerk. Such notice shall be published for the first time, not less than twelve (12) days prior to the election, and the second publication shall be made not less than five (5) days prior to such election in a newspaper published within the county.

(e) Immediately after such election, the judges at such election shall forward the ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election. If one-half (1/2) or more of the votes cast at such election are against the formation of such district, the county commissioners shall enter an order so finding and declaring that such district shall not be formed. If more than one-half (1/2) of the votes cast at such election are in favor of forming such district, the county commissioners shall enter an order so finding, declaring such district duly organized under the name designated in such petition, and dividing such district into three (3) subdivisions, as nearly equal in population as possible, to be known as director's subdistricts one (1), two (2) and three (3). The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county and shall cause one (1) certified copy of such order to be transmitted to the governor. Immediately upon the entry of such order, the organization of such district shall be complete.

(f) Upon receipt of a certified copy of the order of the county commissioners, the governor shall appoint a qualified elector from each director's subdistrict who shall constitute the first board of such district. The appointees from director's subdistricts one (1) and two (2) shall serve until the first

district election thereafter held at which their successors shall be elected and the appointee from director's subdistrict three (3) shall serve until the second district election thereafter held at which such appointee's successor shall be elected. The certificate of appointment shall be filed with the clerk with a copy forwarded to each appointee.

(g) When the boundaries of the proposed district lie in two (2) or more counties, the county commissioners of each county shall act separately in the election and organization of that part of the proposed district contained in their county but the county commissioners of each such county shall meet together before calling such election, subject to the provisions of section 34-106, Idaho Code, and provide for uniform proceedings in each county and fix the boundaries of each director's subdistrict in case such election shall carry.

(h) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualification of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the organization of such district after six (6) months have expired from the date of entering the order declaring the formation of such district. [1970, ch. 212, § 4, p. 599; am. 1980, ch. 350, § 10, p. 887; am. 1995, ch. 118, § 38, p. 417; am. 2001, ch. 375, § 1, p. 1313.]

#### STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 2001, ch. 375 declared an emergency. Approved April 10, 2001.

**31-4304A. Creation of a planned unit development recreation district.** — A recreation district may be created by a planned unit development created pursuant to section 67-6515, Idaho Code, applicable to the boundaries of the planned unit development as created by county permit pursuant to the following special terms and provisions:

(a) A "qualified elector" as defined in section 31-4303, Idaho Code, shall include a person owning real property in the proposed district.

(b) Upon receipt of a petition signed by sixty percent (60%) of the qualified electors in a planned unit development to form a recreation district, the board of county commissioners shall issue an order so finding a district has been formed as if an election had been held pursuant to section 31-4304, Idaho Code.

(c) The provisions of subsections (f) and (g) of section 31-4304, Idaho Code, shall apply to initial appointment of a board of directors for a district organized pursuant to this section. Additionally, the provisions of this chapter shall apply to the provisions of a district organized pursuant to this section. [I.C., § 31-4304A, as added by 1995, ch. 353, § 1, p. 1193.]

**31-4305. Directors — Qualifications — Vacancy — Compensation — Term.** — Each district shall be governed by a board of three (3) directors who shall manage and conduct the business and affairs of such district and



all powers granted to such district by this chapter shall be exercised by such board or its duly authorized officers and agents.

At any time after the creation of the district, the board of directors may, by resolution duly adopted, increase the size of the board from three (3) members to five (5) members. The resolution shall provide for the designation of five (5) director's subdistricts. A qualified elector shall be appointed by the board to each of the newly created director's positions, one (1) of whom shall serve until the first district election thereafter held, and one (1) of whom shall serve until the second district election thereafter held.

Every director appointed or elected shall be a qualified elector and a resident of such district. Not more than one (1) director shall reside in the same director's subdistrict. Each director shall take and subscribe an oath of office before assuming any duties which oath shall be filed in the records of the board. Any vacancy occurring in the office of director, other than by expiration of the term of office, shall be filled by appointment by the board for the unexpired term. The directors shall receive no compensation for their services as a director but shall be entitled to reimbursement for the amount of their actual and necessary expenses incurred in the performance of their official duties. Following the term of the initial appointment, a director shall be elected for a term of four (4) years which shall begin on the first day of January of the year following such election and shall continue until a successor is elected and has qualified. [1970, ch. 212, § 5, p. 599; am. 1983, ch. 114, § 1, p. 245; am. 1995, ch. 118, § 39, p. 417.]

**31-4306. Election of directors.** — (1) An election of directors shall be held in each district on the Tuesday succeeding the first Monday of November of each even-numbered year. Such election shall be held in conformity with chapter 14, title 34, Idaho Code, and other applicable provisions of title 34, Idaho Code. Before the notice of election is given, the board shall divide the district into subdivisions as nearly equal in population as possible to be designated as director's subdistrict 1, 2 and 3, or director's subdistrict 1, 2, 3, 4 and 5, depending upon the number of subdistricts in the district. Each nominating petition shall state the subdistrict for which the nominee is nominated.

(2) In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated for each position to be filled and if no declaration of intent has been filed as provided in subsection (3) of this section, it shall not be necessary to hold an election, and the board of directors, shall no later than seven (7) days before the scheduled date of the election declare such candidate elected as director, and the secretary of the recreation district board shall immediately make and deliver to such person a certificate of election.

(3) No write-in vote for recreation district director shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of recreation district director if elected. The declaration of intent shall be filed with the recreation district board secretary not later than twenty-five (25) days before the day

of election. [1970, ch. 212, § 6, p. 599; am. 1971, ch. 32, § 1, p. 76; am. 1982, ch. 254, § 7, p. 646; am. 1983, ch. 114, § 2, p. 245; am. 1994, ch. 328, § 1, p. 1058; am. 2000, ch. 4, § 1, p. 5.]

#### STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 2000, ch. 4 provided that the act shall be in full force and effect on and after July 1, 2000.

**31-4307. Persons who may vote in election.** — Any person may vote at a district election who is a qualified elector as defined in section 34-104, Idaho Code, for a recreation district created pursuant to section 31-4304, Idaho Code, or as defined in section 31-4304A, Idaho Code, for a recreation district created pursuant to that section. [1970, ch. 212, § 7, p. 599; am. 1982, ch. 254, § 8, p. 646; am. 1995, ch. 118, § 40, p. 417; am. 1995, ch. 353, § 2, p. 1193.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1995 acts — ch. 118, § 40, and ch. 353, § 2, both effective July 1, 1995 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 118, § 40, following “section 34-104, Idaho Code” deleted “; except that elector registration shall not be required in order to qualify as an elector

under the provisions of this chapter”.

The 1995 amendment, by ch. 353, § 2, following “who is a qualified elector” deleted “and resident of such district” and following “section 34-104, Idaho Code” inserted “, for a recreation district created pursuant to section 31-4304, Idaho Code, or as defined in section 31-4304A, Idaho Code, for a recreation district created pursuant to that section”.

**31-4308. Organization of board — Meetings — Inspection of records.** — Immediately after their appointment and thereafter as required but at least after each director’s election the board shall meet, organize as a board, elect and appoint the officers of the board and designate the hour, day and place on which regular meetings of the board will be held which place shall be within the district. A special meeting may be called in writing by the president or any two (2) directors and notice thereof shall be given by serving a copy of such call upon each director not joining therein at least twenty-four (24) hours prior to such meeting if served personally or at least five (5) days prior to such meeting if served by mail to such director’s last known address. Such call and proof of service thereof shall be filed with the minutes of such special meeting. All meetings of the board shall be public. A majority of the board shall constitute a quorum. Minutes shall be kept of all meetings of the board. All records of the board shall be open to inspection by any qualified elector during business hours. [1970, ch. 212, § 8, p. 599.]

**31-4309. Officers of board.** — The officers of the board shall consist of a president, a vice president, a secretary and a treasurer. The president and vice president shall be elected by the board and each shall be a director. The secretary and treasurer shall be appointed by the board and may be a director or any other person. The offices of secretary and treasurer may be

filled by the same person. All officers shall serve at the pleasure of the board. Each officer shall take, subscribe and file with the secretary an oath of office before assuming any duties. The board shall fix a compensation, if any, to be paid to each officer which compensation shall be paid out of the funds of the district. [1970, ch. 212, § 9, p. 599.]

**31-4310. President of board — Duties.** — The president shall be the executive officer of the district, shall preside at all board meetings, shall countersign all checks for expenditure of district funds when such expenditure has been legally authorized and shall perform all other duties which are provided in this act to be performed by the president or which are directed or authorized by the board. The vice president shall act in the absence of the president and shall perform all other duties which are directed or authorized by the board. [1970, ch. 212, § 10, p. 599.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act,"  
see Compiler's notes, § 31-4301.

**31-4311. Secretary of board — Duties.** — The secretary shall keep correct minutes of the proceedings of the board (including but not limited to showing all bills submitted, considered, allowed or rejected), shall have custody of the records of the district, except those in the custody of the treasurer, and shall perform all other duties which are provided in this act to be performed by the secretary or which are directed or authorized by the board. [1970, ch. 212, § 11, p. 599.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act,"      The words in parentheses so appeared in  
see Compiler's notes, § 31-4301.      the law as enacted.

**31-4312. Treasurer of board — Duties.** — The treasurer shall have custody of all funds belonging to the district, shall keep accurate accounts of all such district funds, shall keep all district funds in the banks or investments designated by the board, shall have custody of the financial records of the district, shall pay out district funds only upon legally authorized checks or warrants signed by the treasurer and countersigned by the president, shall perform all other duties which are provided in this act to be performed by the treasurer or which are directed or authorized by the board, and shall execute and file with the secretary an official bond in an amount to be fixed by the board but the costs of such bond shall be paid from district funds. [1970, ch. 212, § 12, p. 599.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act,"  
see Compiler's notes, § 31-4301.



**31-4313. Fiscal year — Audit.** — The fiscal year of each district shall commence on the first day of October of each year. The directors shall cause a full and complete audit of the financial statements of the district as required in section 67-450B, Idaho Code. [1970, ch. 212, § 13, p. 599; am. 1980, ch. 351, § 1, p. 911; am. 1993, ch. 387, § 5, p. 1417.]

**31-4314. Limitation of power to incur debt.** — Neither the board nor any officer shall have power to incur any debt or liability on behalf of the district, whether by issuance of bonds or otherwise, in excess of the express provisions of this act and any such debt or liability so incurred shall be void; except that for the purpose of organization or for any of the purposes of this act, the board may before making the tax levy in the fiscal year of organization, incur debts not exceeding in the total a sum equal to one-tenth of one percent (0.1%) of market value for assessment purposes of the taxable property within the district or five-tenths of one percent (0.5%) of market value for assessment purposes of the taxable property within a district that is created pursuant to section 31-4304A, Idaho Code. The provisions of section 63-807, Idaho Code, shall not apply to any recreation district if that district is created prior to June 1. [1970, ch. 212, § 14, p. 599; am. 1971, ch. 32, § 2, p. 76; am. 1990, ch. 394, § 1, p. 1105; am. 1995, ch. 353, § 3, p. 1193; am. 1996, ch. 322, § 15, p. 1029.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4301. ch. 32 declared an emergency. Approved February 27, 1971.

**Effective Dates.** — Section 3 of S.L. 1971,

**31-4315. Claims against district.** — All claims against the district shall be presented to the board. Upon allowance of claims by the board, payment may be ordered by warrant, signed by the treasurer and countersigned by the president or by check signed by the treasurer and countersigned by the president. In the absence of sufficient funds for the payment of claims allowed, the board may, by resolution, order payment of claims by money borrowed by registered warrants as provided in section 31-2125, Idaho Code, or by money borrowed by issuing tax anticipation notes as provided by chapter 31, title 63, Idaho Code. [1970, ch. 212, § 15, p. 599; am. 1994, ch. 53, § 1, p. 92.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1994, ch. 53 declared an emergency. Approved March 3, 1994.

**31-4316. Purpose of district.** — Each district is organized for the uses and purposes of acquiring, providing, maintaining and operating public recreation centers, swimming facilities, pools, picnic areas, camping facilities, ball parks, handball courts, tennis courts, marine and snowmobile facilities, recreational pathways, ski areas, and golf courses and public

transportation systems and facilities serving the district together with all related grounds, buildings, equipment and apparatus for the use of the residents of the district and the public generally. [1970, ch. 212, § 16, p. 599; am. 1971, ch. 178, § 1, p. 844; am. 1972, ch. 10, § 1, p. 15; am. 1972, ch. 188, § 1, p. 475; am. 1979, ch. 290, § 1, p. 769; am. 1991, ch. 178, § 1, p. 441; am. 1995, ch. 353, § 4, p. 1193.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1972, ch. 10 declared an emergency. Approved February 10, 1972.

Section 2 of S.L. 1972, ch. 188 declared an emergency. Approved March 21, 1972.

**31-4317. Powers of district.** — Each district is a body politic and corporate and as such shall, in the name of and for the uses and purposes of the district, have power:

(a) to adopt a seal which may be changed or altered at the pleasure of the board;

(b) to sue and be sued;

(c) to designate one (1) or more banks to be the official depository of the district funds as provided by law;

(d) to make and execute all contracts necessary or convenient;

(e) to acquire, hold, occupy, use, manage, possess, lease, exchange, sell and convey such property, both real and personal, as may be necessary or convenient;

(f) to accept gifts and donations of such property, both real or personal, as may be necessary or convenient;

(g) to construct or erect all buildings or structures which are necessary or convenient;

(h) to cooperate with and to contract with the state and federal governments or any bureau or agency thereof and with any county, city, school district, other recreation districts, other political subdivisions or municipal corporations to provide funds for district facilities or to provide joint facilities;

(i) to operate and provide all concessions necessary or convenient;

(j) to provide classes in water safety and swimming to the public;

(k) to hire and to dismiss all necessary agents, attorneys and other employees and to fix and pay their compensation and expenses out of the district funds;

(l) to require a bond for the faithful performance of their duties as such officers, agents or employees of the district and to pay the costs thereof from district funds;

(m) to fix and collect fees and charges for the use of the district's facilities, and to reduce or waive the same as to any person not reasonably able to pay therefor;

(n) to make and enforce all rules and regulations for the operation and use of the district facilities;

(o) to invest any funds of the district not then required for district purposes in any securities of the state or the United States or in time certificates of deposit of authorized public depositories;

(p) to levy and apply such taxes for such purposes as are authorized by law;

(q) to exercise such other powers as may be conferred by law;

(r) may contract with the county, or highway district to maintain and improve public transportation systems within and providing access to the district. The district shall be entitled to all fees levied within the district each year on real and personal property for such purposes. [1970, ch. 212, § 17, p. 599; am. 1974, ch. 15, § 1, p. 302; am. 1995, ch. 353, § 5, p. 1193.]

**31-4318. Levy of tax.** — (1) For districts created prior to July 1, 2001, the board is empowered to levy a tax for the uses and purposes of the district in an amount not exceeding six hundredths percent (.06%) of the market value for assessment purposes on all of the taxable property within the district or in an amount not exceeding in any one (1) year one percent (1%) of market value for assessment purposes of all of the taxable property within a district created pursuant to section 31-4304A, Idaho Code.

(2) For districts created on or after July 1, 2001, the board is empowered to levy a tax for the uses and purposes of the district in an amount not exceeding the rate contained in the petition creating the recreation district or planned unit development recreation district, or six hundredths percent (.06%) of the market value for assessment purposes on all of the taxable property within the district, or one percent (1%) of market value for assessment purposes of all of the taxable property within a district created pursuant to section 31-4304A, Idaho Code. If a district desires to impose a tax rate in excess of that contained in its petition, it may submit the question to the electors of the district at an election held subject to the provisions of section 34-106, Idaho Code. The notice for the election shall be in similar scope to that contained in section 31-4324, Idaho Code, and shall be conducted pursuant to section 31-4325, Idaho Code. If a majority of the electors voting at the election vote in favor of increasing the tax rate maximum, the new tax rate shall be in effect for the tax year following the election and for each succeeding tax year.

(3) The board shall by resolution fix the levy to be made for such district for such year and the secretary shall transmit a certified copy of such resolution to the county commissioners at the time and in the manner provided by section 63-804, Idaho Code. Such taxes shall be collected as provided by section 63-812, Idaho Code, and remitted to the treasurer of the district as provided by section 63-1202, Idaho Code. [1970, ch. 212, § 18, p. 599; am. 1995, ch. 82, § 8, p. 218; am. 1995, ch. 353, § 6, p. 1193; am. 1996, ch. 208, § 19, p. 658; am. 1996, ch. 322, § 16, p. 1029; am. 1997, ch. 117, § 2, p. 298; am. 2001, ch. 375, § 2, p. 1313.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1996 acts — ch. 208, § 19, effective July 1, 1996, and ch. 322, § 16, effective January 1, 1997 — which appear to conflict and could not be compiled together. The first sentence of this section has been set

out twice, the first version reflects the changes made by ch. 208 and the second, bracketed version reflects the changes made by ch. 322.

The 1996 amendment, by ch. 208, § 19, in the first sentence, following “within the dis-



trict or", substituted "in an amount not exceeding in any one (1) year one percent (1%) of market value for assessment purposes of all of the taxable property" for "in an amount not exceeding ten (10) mills in any one (1) year on each one dollar (\$1.00) of the assessed valuation upon all of the taxable property".

The 1996 amendment, by ch. 322, § 16, in the first sentence, following "within the district or", substituted "which levy shall not exceed twenty hundredths percent (.20%) of market value for assessment purposes in any one (1) year upon all of the taxable property" for "in an amount not exceeding ten (10) mills in any one (1) year on each one dollar (\$1.00) of the assessed valuation upon all of the

taxable property"; in the second sentence, substituted "section 63-804" for "sections 63-621 through 63-624"; and in the last sentence, substituted "section 63-812" for "section 63-918" and "section 63-1202" for "section 63-2104".

**Effective Dates.** — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1-40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 3 of S.L. 2001, ch. 375 declared an emergency. Approved April 10, 2001.

**31-4318A. Fee in lieu of taxes.** — (1) The board is empowered to impose and provide for the collection of a uniform fee from the residents of the district to provide funds for the uses and purposes of the district which would otherwise be derived from the tax levy authorized in section 31-4318, Idaho Code. Any fee imposed pursuant to this section shall be in lieu of and not in addition to the tax levy provided for in section 31-4318, Idaho Code.

(2) The fee shall be certified and collected in the same manner as the tax provided for in section 31-4318, Idaho Code, would be certified and collected. [I.C., § 31-4318A, as added by 1993, ch. 285, § 1, p. 973.]

**31-4319. Annexation of additional territory.** — After the organization of a district, additional territory adjoining the district and not included within an already existing recreation district, whether located in one (1) or several counties, may be annexed to and included within such district by the affirmative vote of a majority of the qualified electors of such additional territory voting on the question at an election held therefor, subject to the provisions of section 34-106, Idaho Code, but such additional territory shall not be annexed to and included within such district unless such annexation and inclusion is first approved by resolution of the board of such district prior to the elections on the question of annexation. The same procedure with such modifications in the form of petition, notices, ballots, etc., as may be necessary shall be adopted as provided in section 31-4304, Idaho Code, except that no change shall be made in director's subdistricts until the next regular director's election and no appointment of any director shall be made by the governor. [1970, ch. 212, § 19, p. 599; am. 1995, ch. 118, § 41, p. 417.]

**31-4320. Dissolution of district — Procedure.** — A recreation district may be dissolved as follows:

(a) Any person or persons may file a petition for the dissolution of a recreation district with the clerk. Such petition which may be in one (1) or more papers shall state the name of the district and shall be signed by not less than twenty per cent (20%) of the qualified electors resident within the boundaries of the district.

(b) Within thirty (30) days after the filing of such petition, the county commissioners shall determine whether or not the same substantially

complies with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to that effect specifying the particular deficiencies and dismissing the petition. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to that effect and calling an election, subject to the provisions of section 34-106, Idaho Code, upon the dissolution of such district as provided in this section.

(c) If the county commissioners order an election as provided in this section, such election shall be conducted and notice thereof given in accordance with the provisions of section 31-4304, Idaho Code.

(d) Immediately after such election, the judges at such election shall forward the ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election. If one-half ( $\frac{1}{2}$ ) or more of the votes cast at such election are against the dissolution of such district, the county commissioners shall enter an order so finding and declaring that such district shall not be dissolved. If more than one-half ( $\frac{1}{2}$ ) of the votes cast at such election are in favor of dissolving such district, the county commissioners shall enter an order so finding and declaring such district duly dissolved. The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county. Immediately upon the entry of such order, the dissolution of such district shall be complete.

(e) Upon such dissolution being complete, title to all property of the dissolved district shall vest in the county where such property is situated. The county commissioners shall then: sell and dispose thereof in the manner provided by law for the sale or disposition of county property; apply the proceeds thereof to pay any lawful claims against the dissolved district, if any; and apply the balance remaining, if any, to any public recreation purposes within the county.

(f) When the boundaries of the district lie in two (2) or more counties, the county commissioners of each county shall act separately in the election and dissolution of that part of the district contained in their county but the county commissioners of each such county shall meet together before calling such election and provide for uniform proceedings in each county. If there is any balance remaining after sale and disposition of the property of such dissolved district, it shall be prorated among such counties in proportion to each county's share of the total assessed valuation of such dissolved district for the preceding calendar year.

(g) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the dissolution of such district after six (6) months has expired from the date of entering the order declaring the dissolution of such district. [1970, ch. 212, § 20, p. 599; am. 1995, ch. 118, § 42, p. 417.]

**31-4320A. Dissolution of inactive district.** — Whenever a recreation district, created pursuant to this chapter, has failed to exercise the powers

of a district, owns no property, levies no tax, and has incurred no indebtedness, within three (3) years of the creation of the district, the district may be dissolved by order of the county commissioners. The question of dissolution pursuant to this section shall be considered by the board of county commissioners at the first meeting of the commissioners following the second Monday in September, when, for the third consecutive year, no certification of a tax levy has been received from the recreation district. In the event of dissolution, the county commissioners shall cause one (1) certified copy of the order of dissolution to be filed in the office of the county recorder of the county. Immediately upon the entry of such order, the dissolution of the district shall be complete. [I.C., § 31-4320A, as added by 1989, ch. 293, § 1, p. 721.]

**31-4321. Liberal construction.** — The provisions of this act shall be liberally construed and applied to promote its underlying purposes and policies. [1970, ch. 212, § 21, p. 599.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4301.

Section 22 of S.L. 1970, ch. 212, read: "The several sections, parts and provisions of this act are hereby declared to be independent and

severable and the invalidity of any section, part or provision thereof shall not affect, impair or invalidate the remainder of such section, part or provision thereof or any other section, part or provision thereof."

**31-4322. Bond issues authorized — Form and terms.** — To carry out the purposes of this chapter and to pay the necessary expenses of the district, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall be due and payable serially either annually or semiannually, commencing not later than three (3) years and extending not more than thirty (30) years from date. The form and terms of said bonds, including provisions for the rate of interest, their payment, and redemption shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent (3%) of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board. In other respects, said bonds shall be issued, sold and paid in accordance with the provisions of the Municipal Bond Law of the state of Idaho. [I.C., § 31-4322, as added by 1971, ch. 71, § 1, p. 161.]

#### STATUTORY NOTES

**Compiler's Notes.** — The Municipal Bond Law, referred to near the end of this section, is compiled in Chapter 2 of Title 57.



**31-4323. Creation of indebtedness for works or improvements — Election on proposed indebtedness.** — Whenever the board of a recreation district shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, completion or maintenance of any purpose stated in section 43-4316 [section 31-4316], Idaho Code, equipment or apparatus to carry out the objects or purposes of said district requiring the creation of an indebtedness exceeding the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or creating other indebtedness to the qualified electors, at an election held, subject to the provisions of section 34-106, Idaho Code, for that purpose. The declaration of public interest or necessity, herein required, and the provision for the holding of such election, may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolutions shall also fix the date upon which such election shall be held, and the manner of holding the same, and the method of voting for or against the incurring of the proposed indebtedness; such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place or places and shall appoint for each polling place, from the qualified electors who are taxpayers of the district, the officers of such election, consisting of three (3) judges, one (1) of whom shall act as the clerk, provided, however, that no district shall issue or have outstanding its coupon bonds in excess of two percent (2%) of market value for assessment purposes of the real estate and personal property within the said district or in excess of ten percent (10%) of market value for assessment (of) purposes of real estate and personal property within a district created pursuant to section 31-4304A, Idaho Code, according to the assessment of the year preceding any such issuance of such evidence of indebtedness for any or all of the propositions specified in this election. [I.C., § 31-4323, as added by 1971, ch. 71, § 2, p. 161; am. 1980, ch. 350, § 11, p. 887; am. 1995, ch. 118, § 43, p. 417; am. 1995, ch. 353, § 7, p. 1193.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1995 acts — ch. 118, § 43, and ch. 353, § 7, both effective July 1, 1995 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 118, § 43, near the end of the first sentence, following “at an election held” inserted “, subject to the provisions of section 34-106, Idaho Code.”

The 1995 amendment, by ch. 353, § 7, in the first sentence, substituted “purpose stated in section 43-4316, Idaho Code” for “buildings”, following “the creation of an indebted-

ness” deleted “of five thousand dollars (\$5,000) or more, and in any event, when the indebtedness will”, substituted “exceeding” for “exceed”, and near the end of the section, added “or in excess of ten percent (10%) of market value for assessment of purposes of real estate and personal property within a district created pursuant to section 31-4304A, Idaho Code” preceding “according to the assessment of the year”.

**Compiler's Notes.** — The bracketed reference “section 31-4316” was inserted by the compiler since this was thought to be the

reference intended and there is no §. 43-4316. was enclosed in parentheses by the compiler  
The word "of", near the end of the section, as surplusage.

**31-4324. Notices of election on proposed indebtedness.** — When such election is ordered to be held, subject to the provisions of section 34-106, Idaho Code, the board shall cause notices of the election to be published for the first time not less than twelve (12) days prior to the election and a second publication shall be made not less than five (5) days prior to the election, in accordance with the provisions of section 34-1406, Idaho Code. Said notices shall recite the action of the board in deciding to bond the district, the purpose thereof and the amount of the bonds supposed to be issued, the estimated costs of the works or improvements as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness, and shall also specify the date of the election and the time during which the polls shall be open. Notices shall also name the place holding the election. [I.C., § 31-4324, as added by 1971, ch. 71, § 3, p. 161; am. 1995, ch. 118, § 44, p. 417.]

**31-4325. Conduct of election for proposed indebtedness.** — The election board or boards shall conduct the election in a manner prescribed by law for the holding of general elections and shall take their returns to the secretary of the district at any regular or special meeting of the board held within five (5) days following the date of such election. The returns thereof shall be canvassed and the results thereof shall be declared. [I.C., § 31-4325, as added by 1971, ch. 71, § 4, p. 161.]

**31-4326. Indebtedness incurred upon favorable vote — Resubmission of proposition not received favorably.** — In the event that it shall appear from said returns that a majority, in the amount which is now, or may hereafter be, set by the constitution of the state of Idaho for approval of indebtedness, of the qualified electors of the district voting at such election shall have voted in favor of such proposition or any proposition submitted hereunder at such election, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract or issue and sell bonds of the district, as the case may be, all for the purpose or purposes, and object or objects provided for in the propositions submitted hereunder and in the resolution therefor and in the amount so provided at a rate of interest not exceeding the rate of interest recited in such resolution. The submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same, or other propositions, at subsequent election or elections called for such purpose at any time. [I.C., § 31-4326, as added by 1971, ch. 71, § 5, p. 161.]

**31-4326A. Security — Tax levies and sinking fund.** — After the issuance of any bonds authorized by section 31-4326, Idaho Code, the full faith and credit of the issuing district, and all taxable property within its

limits, as constituted at the time of the issuance of such bonds, are, shall be, and must continue, pledged to the full and prompt payment of the principal and interest thereof. Should any tax for the payment of principal and interest on any bonds issued under the provisions of this act at any time not be levied or collected in time to meet such payments, such payments shall be made out of other funds of such district. The governing board of such district shall levy and cause to be levied annually at the time when and in the manner in which other general taxes of such district are levied, upon all the taxable property within its limits, in addition to all other authorized taxes and assessments, a tax or assessment sufficient to meet the payments of principal of and interest on said bonds as the same mature, and to constitute a sinking fund for the payment of the principal amount of said bonds and the interest thereon within no more than twenty (20) years from the time of contracting the indebtedness evidenced thereby all in accordance with the provisions made for the payment of the principal of and interest on such bonds as theretofore provided by ordinance or by resolution and as required by the constitution and laws of the state of Idaho; and such taxes shall be levied, assessed, certified, extended, and collected by the proper officers and at the times, all as fixed by law and as other taxes are levied, assessed, certified, extended and collected in, for and by the district and by the same officers thereof until the principal and interest of all such bonds and interest thereon shall be fully paid. All of such taxes when collected shall be credited by the proper receiving officers to separate funds distinct from the funds for the payment of the principal of or the interest on bonds of any other series or issue, and apart from any other funds of the district. The requirements of this section shall apply to all bonds hereafter issued by recreation districts pursuant to said section 31-4326, Idaho Code, including any such bonds heretofore voted but not yet issued. [I.C., § 31-4326A, as added by 1973, ch. 77, § 1, p. 122.] .

#### STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1973, ch. 77 declared an emergency. Approved March 2, 1973.

**31-4327. Recreation district reserve fund.** — The board of any recreation district may create and establish a recreation facilities reserve fund by resolution adopted at any regular or special meeting of the board. Moneys shall be credited to said fund which accrue from taxes levied under section 31-4318, Idaho Code, as provided in section 31-4328, Idaho Code, together with interest accruing from the investment of any moneys in the fund. [I.C., § 31-4327, as added by 1971, ch. 71, § 6, p. 161.]

**31-4328. Recreation facilities reserve fund election.** — In any recreation district in which a recreation facilities reserve fund has been created, the board may submit to the qualified electors of the district, the question of applying the levy of six hundredths percent (.06%) of the market value for assessment purposes on all taxable property [within the] in a



district or ten (10) mills in a district created pursuant to section 31-4304A, Idaho Code, authorized in section 31-4318, Idaho Code, or a portion thereof, to the credit of the recreation facilities reserve fund.

The notice of such election shall state the number of mills proposed to be levied, the period of years in each of which the levy is proposed to be made, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in sections 31-4323 through 31-4326, Idaho Code, and the levy shall be approved only if a majority, in the amount which is now, or may hereafter be, set by the constitution of the state of Idaho for approval of indebtedness, if the qualified voters vote in favor.

If the question be approved, the board may make a levy in each year according to the terms so approved, and may again submit the question at the expiration of the period of such levy, for the number of mills and the number of years which the board may at that time determine, or, during the period approved at any such election, if such period be less than ten (10) years or the number of mills be less than three (3), the board may submit to the qualified electors in the same manner as before, the question whether the number of years, or the number of mills, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect. [I.C., § 31-4328, as added by 1971, ch. 71, § 7, p. 161; am. 1995, ch. 82, § 9, p. 218; am. 1995, ch. 353, § 8, p. 1193.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1995 acts — ch. 82, § 9, and ch. 353, § 8, both effective July 1, 1995 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 82, § 9, in the first sentence and preceding “authorized in section 31-4318, Idaho Code”, substituted “six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the district” for “three (3) mills”.

The 1995 amendment, by ch. 353, § 8, in the first sentence and preceding “authorized in section 31-4318, Idaho Code”, inserted “in a district or ten (10) mills in a district created pursuant to section 31-4304A, Idaho Code,”. As a result of compiling these amendments together, the words “within the” have been added in brackets.

**Effective Dates.** — Section 8 of S.L. 1971, ch. 71 declared an emergency. Approved March 8, 1971.

**31-4329. Adoption of budget — Public hearing.** — A board shall adopt a budget and cause a public hearing to be held upon such budget prior to certifying a tax levy to a board of county commissioners. [I.C., § 31-4329, as added by 1973, ch. 83, § 1, p. 132.]

**31-4330. Notice of hearing — Posting and publication.** — Notice of the budget hearing meeting shall be posted at least ten (10) full days prior to the date of said meeting in at least one (1) conspicuous place in each recreation district to be determined by the board, a copy of such notice shall also be published in a daily or weekly newspaper published within such recreation district, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of such hearing shall be specified in said notice, as

well as the place where such budget may be examined prior to such hearing. A full and complete copy of such proposed budget shall be published with and as a part of the publication of such notice of hearing. [I.C., § 31-4330, as added by 1973, ch. 83, § 2, p. 132.]

**31-4331. Public inspection.** — Such budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this act provided, at such place and during such business hours as the board may direct. [I.C., § 31-4331, as added by 1973, ch. 83, § 3, p. 132.]

STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1973, ch. 83 compiled as §§ 31-4329 — 31-4332.

**31-4332. Board attendance — Duties.** — A quorum of the board of the recreation district shall attend such hearing and explain the proposed budget and hear any and all objections thereto. [I.C., § 31-4332, as added by 1973, ch. 83, § 4, p. 132.]

**31-4333. Confirmation of elections and subdistrict boundaries.** — That all recreation districts heretofore organized or purported to be organized pursuant to the provisions of chapter 43, title 31, Idaho Code, known as the "recreation district law," the legal descriptions of the boundaries thereof and of the boundaries of the subdistricts therein, and all elections held or purported to have been held in such recreation districts prior to the effective date [March 2, 1973], of this act, and all notices given and proceedings and actions taken in connection therewith are hereby confirmed, ratified and validated; and no contest shall be maintained concerning the organization of such districts, the boundaries thereof and of the subdistricts therein, such elections or such notices, proceedings and actions. [1973, ch. 77, § 2, p. 122.]

STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1973, ch. 77 declared an emergency. Approved March 2, 1973.

CHAPTER 44

SOLID WASTE DISPOSAL SITES

SECTION.	SECTION.
31-4401. Purpose and policy of law.	31-4406. Ordinances regulating operations and maintenance — Criminal penalties — Injunction.
31-4401A. Definitions.	
31-4402. Authority of county commissioners.	31-4407. Existing and future municipal facilities to conform to chapter.
31-4403. Operation and maintenance.	31-4407A. Changes in status of major waste generators and municipalities — Procedures.
31-4404. Funding of operations.	
31-4405. Rules and regulations — Notice of violation — Misdemeanor — Injunction.	

## SECTION.

31-4408. Existing and future systems — Jurisdiction of commissioners — Disposition of waste on own land.

31-4409. Joint operation by counties.

## SECTION.

31-4410. Disposal of waste at place other than waste disposal system — Misdemeanor — Civil damages — Venue of action.

31-4411. Preexisting contracts — Validation.

**31-4401. Purpose and policy of law.** — It is hereby declared to be the public policy of the state of Idaho that solid waste disposal systems be established, maintained and operated in each of the several counties of the state for the purpose of reducing the threat to health posed by uncollected garbage, refuse and scrap; for the purpose of maintaining the natural and esthetic setting of our land, water and air resources; for the purpose of providing a means for reclamation of otherwise unusable land areas; and for the purposes of such other cultural, social, economic and sanitation reasons as may be necessary from time to time. [1970, ch. 104, § 1, p. 259; am. 1971, ch. 61, § 1, p. 137; am. 1987, ch. 213, § 1, p. 454.]

## JUDICIAL DECISIONS

**Valid Meeting.**

Even though there was evidence that it was common-place for the commissioners to fail to give notice of meetings by posting an agenda in accordance with § 67-2343(1), such violations did not affect the status of meeting that was conducted in accordance with the open meetings law and commission's final decision on selection of new land fill site made at that meeting was not tainted by the impropriety of

any preceding actions that were not challenged in a timely manner. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

**Cited in:** *Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 114 Idaho 588, 759 P.2d 879 (1988); *Kootenai County Property Ass'n v. Kootenai County*, 115 Idaho 676, 769 P.2d 553 (1989).

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 402-404, 416 et seq.

**31-4401A. Definitions.** — In this chapter:

(1) "Major solid waste generator" means any person who generates two per cent (2%) or more of the total solid waste originating in any county.

(2) "Person" means any natural person, firm, corporation, or other entity, but does not include a municipality, a state agency or a state educational institution.

(3) "Significant effect" means any change in the amount of solid waste to be sent to any waste disposal site which exceeds either five per cent (5%) of the total monthly amount of waste disposal at any particular solid waste disposal site during the most recent calendar year, or five per cent (5%) of the projected processing capacity of any new solid waste disposal site.

(4) "State agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases.

(5) "State educational institution" means a public educational facility or institution regulated by the state board of education or the board of regents of the university of Idaho.



(6) "System" means lands, sites, facilities, equipment and manpower necessary for collection, transportation, storage, treatment, processing, reuse, recycling or other means necessary for the disposal of solid waste.

(7) "Waste processing facility" means any waste disposal site or any public work at which solid waste is compacted, incinerated, or otherwise treated prior to disposal. It shall not include the placement of portable collection facilities or similar equipment used solely to facilitate collection of solid waste. [I.C., § 31-4401A, as added by 1987, ch. 213, § 2, p. 454.]

**31-4402. Authority of county commissioners.** — The board of county commissioners in each of the several counties is hereby authorized to acquire, establish, maintain and operate such solid waste disposal systems as are necessary and to provide reasonable and convenient access to such disposal systems by all the citizens of the county. For the purpose of establishing systems for solid waste disposal, the board of county commissioners may purchase, lease, condemn or receive as gifts such areas as are suitable, or the board may exchange land with any other unit or units of government under such terms as are mutually advantageous. In order that a county may acquire sites or systems as expeditiously and advantageously as possible, a county may use funds from current revenues, may use funds made available through the issuance of bonds, or may use funds made available from county building construction funds, and the provisions of chapter 10, title 31, Idaho Code, are hereby made applicable for the acquisition of solid waste disposal systems and a solid waste disposal system is declared to be a public building within the definition of chapter 10, title 31, Idaho Code, except that notwithstanding any other provisions of law, no board of county commissioners or other public authority shall be required to contract out the establishment, acquisition, operation or maintenance of a solid waste disposal system, but if it should elect to do so, it may waive the giving of a bond or other security in connection with such contract upon such terms and conditions as it deems appropriate, and provided further that any county may itself, without contracting out to any other party, establish, acquire, operate and maintain a solid waste disposal system. [1970, ch. 104, § 2, p. 259; am. 1971, ch. 61, § 2, p. 137; am. 1979, ch. 109, § 1, p. 345.]

## JUDICIAL DECISIONS

### ANALYSIS

Contracts.

Necessity for security.

#### Contracts.

Where a construction company entered into a sanitary landfill contract with a county and the contract provided that if the quantity of waste exceeded an annual average tonnage at the site the contract would be renegotiated, the county was liable to the company on the theory of an implied contract for an additional sum when waste disposal exceeded the specified tonnage, even though the renegotiation

provision was unenforceable because it was too vague. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 96 Idaho 881, 538 P.2d 1185 (1975).

#### Necessity for Security.

One who contracts to operate a county's sanitary landfill site must give security in the form of bonds executed by one or more surety companies authorized to do business in Idaho. *McKay Constr. Co. v. Ada County Bd. of*

County Comm'rs, 99 Idaho 235, 580 P.2d 412 (1978)

v. Kootenai County, 115 Idaho 676, 769 P.2d 553 (1989).

Cited in: Kootenai County Property Ass'n

### RESEARCH REFERENCES

**A.L.R.** — Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 A.L.R.3d 1244.

**31-4403. Operation and maintenance.** — It shall be the duty of the board of county commissioners in each of the several counties to acquire sites or facilities, and maintain and operate solid waste disposal systems. Such maintenance and operation may, by exclusive or nonexclusive means, be performed through or by:

(1) Employees, facilities, equipment and supplies hired by or acquired by the board of county commissioners;

(2) Contracts, franchises or otherwise, entered into by the board to have the maintenance and operation performed by private persons;

(3) Contracts entered into by the board to have the maintenance and operation performed by another unit of government;

(4) Contracts, franchises or otherwise, granted pursuant to law by the board, for all or any part or parts of the county;

(5) Any combination of subsections (1), (2), (3) and (4) of this section;

(6) Notwithstanding any other provision of law to the contrary, in order to provide for the public health, safety, and well-being, the board of county commissioners and/or another unit of state government, may determine whether solid waste disposal systems services are to be provided by means of a contract, franchise or otherwise, provided for under subsection (2) of this section, or any contract, franchise or otherwise, awarded under subsection (4) of this section, with or without compulsory competitive bidding;

(7) The board of county commissioners before entering into such contracts, franchises or otherwise may require such security for the performance thereof as it deems appropriate or may waive such undertaking. [1970, ch. 104, § 3, p. 259; am. 1971, ch. 61, § 3, p. 137; am. 1979, ch. 109, § 2, p. 345; am. 1986, ch. 19, § 2, p. 59; am. 2004, ch. 144, § 1, p. 473.]

### JUDICIAL DECISIONS

#### ANALYSIS

Contracts.  
Disposal fee.

#### Contracts.

Where a construction company entered into a sanitary landfill contract with a county and the contract provided that if the quantity of waste exceeded an annual average tonnage at the site the contract would be renegotiated, the county was liable to the company on the theory of an implied contract for an additional sum when waste disposal exceeded the specified tonnage, even though the renegotiation provision was unenforceable because it was

too vague. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 96 Idaho 881, 538 P.2d 1185 (1975).

#### Disposal Fee.

A mandatory solid waste disposal fee was not a "tax" where the fee supported not only the acquisition and preparation of new landfill sites, but also the operation of existing landfills. *Kootenai County Property Ass'n v. Kootenai County*, 115 Idaho 676, 769 P.2d 553 (1989).

## RESEARCH REFERENCES

**A.L.R.** — Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 A.L.R.3d 1244.

**31-4404. Funding of operations.** — For the purpose of providing funds to acquire sites, facilities, operate and/or maintain solid waste disposal systems, a board of county commissioners may in addition to the authority granted in sections 31-4402 and 31-4403, Idaho Code:

(1) Levy a tax of not to exceed four hundredths percent (.04%) of the market value for assessment purposes on all taxable property within the county, provided that property located within the corporate limits of any city that is operating and maintaining a solid waste disposal site shall not be levied against for the purposes of the county solid waste disposal system; or,

(2) Collect fees from the users of the solid waste disposal facilities; or,

(3) Finance the solid waste disposal facilities from current revenues; or,

(4) Receive and expend moneys from any other source;

(5) Establish solid waste collection systems where necessary or desirable and provide a method for collection of service fees, among which shall be certification of a special assessment on the property served;

(6) Use any combination of subsections (1), (2), (3), (4), and (5) of this section. [1970, ch. 104, § 4, p. 259; am. 1971, ch. 61, § 4, p. 137; am. 1995, ch. 82, § 10, p. 218.]

## JUDICIAL DECISIONS

**Disposal Fee.**

A solid waste disposal "fee" for residential dwellings was reasonably related to the services rendered by the county in acquiring, establishing, maintaining and operating its solid waste disposal system. The fee was authorized by subdivision (2) and was not an illegal "tax" in violation of Article 7, §§ 4 and 5, of the Idaho Constitution. *Kootenai County Property Ass'n v. Kootenai County*, 115 Idaho 676, 769 P.2d 533 (1989).

Trial court erred in holding that § 31-

4404(2) permitted the county to charge fees to the nonusers of the county solid waste disposal facilities; the waste collected by the contractor was taken to its own transfer station and none of that waste would go to the county transfer station or to a county landfill, in the event that the contractor or its customers attempted to deliver any waste it collected to the county facility, the county could impose the appropriate charge for doing so. *Waters Garbage v. Shoshone County*, 138 Idaho 648, 67 P.3d 1260 (2003).

**31-4405. Rules and regulations — Notice of violation — Misdemeanor — Injunction.** — All solid waste disposal systems shall be located, maintained and operated according to rules and regulations promulgated and adopted by the state board of environmental quality. Every person who violates any of the provisions of this act, or of any order, rule or regulation of the state board of environmental quality issued pursuant thereto, where a copy of the order, rule or regulation has been served upon said person by certified mail, and said person fails to comply therewith within the time provided in the order, rule or regulation, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor. In the event of a continuing violation, each day that the violation continues constitutes a separate and distinct offense. In addition to the criminal penalties provided by this act, whenever it appears to the state board of



environmental quality that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or of any rule or regulation promulgated and adopted under the provisions of this act, the board may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or regulation hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this act or any rule or regulation hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The board of environmental quality shall not be required to furnish bond. [1970, ch. 104, § 5, p. 259; am. 1971, ch. 61, § 5, p. 137; am. 1974, ch. 23, § 9, p. 633; am. 2001, ch. 103, § 10, p. 253.]

#### STATUTORY NOTES

**Cross References.** — Punishment for misdemeanor, § 18-113.

**Compiler's Notes.** — The words "this act" refer to S.L. 1970, ch. 104, compiled as §§ 31-4401 — 31-4410.

**Effective Dates.** — Section 182 of S.L. 1974, ch. 23 provided that the act be in full force and effect July 1, 1974.

**31-4406. Ordinances regulating operations and maintenance — Criminal penalties — Injunction.** — The board of county commissioners shall by ordinance provide for the necessary rules and regulations for the operation and maintenance of solid waste disposal systems. In addition to the criminal penalties provided for violation of a county ordinance, whenever it appears to the board of county commissioners that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or of a county ordinance enacted pursuant to this act, the board may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any ordinance hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this act or ordinance hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The board of county commissioners shall not be required to furnish bond. [1970, ch. 104, § 6, p. 259; am. 1971, ch. 61, § 6, p. 137.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4405.

#### RESEARCH REFERENCES

**Am. Jur.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 402-404, 416 et seq.

**31-4407. Existing and future municipal facilities to conform to chapter.** — Solid waste disposal facilities now in existence or hereafter

established and maintained and/or operated by any city shall conform in the same manner as county solid waste disposal facilities as provided in section 31-4405, Idaho Code. [1970, ch. 104, § 7, p. 259; am. 1971, ch. 61, § 7, p. 137.]

**31-4407A. Changes in status of major waste generators and municipalities — Procedures.** — (1) Major solid waste generators and municipalities operating solid waste collection or disposal systems pursuant to the authority conferred by law or desiring to initiate or abandon such systems shall conform to the procedures and standards set forth in this section before taking any action which would significantly affect the amount or distribution of solid waste within any county. The board of county commissioners of any county may waive operation of the procedure called for in this section by passage of a resolution indicating their intent to do so.

(2) Whenever a county shall propose the establishment of a new solid waste processing facility within the boundaries of the county or in conjunction with adjoining counties, it shall give notice to all municipalities within its boundaries that it intends to establish a processing facility. In conjunction with the notice, the county shall provide a copy of a feasibility study prepared by a licensed professional engineer concerning the proposed processing facility which shall address the estimated capital cost of the facility, estimated costs of operation of the facility, and the estimated life span of the facility. The notice shall be provided to potentially affected municipalities at least one hundred eighty (180) days prior to the scheduled initiation of construction of any solid waste processing facility.

(3) Within ninety (90) days of receipt of the notice, each affected municipality shall respond to the notice provided by the county, indicating in its response the intention of the municipality to participate in the use of the proposed facility or to develop or continue operation of an independent solid waste processing facility of its own for the projected duration of the proposed county project.

(4) Pursuant to the responses received from affected municipalities, the county proposing development of the solid waste processing facility may tender contracts to participating municipalities assuring the availability of waste disposal capacity at the proposed facility for any duration promised by contract and securing commitments from the municipalities to participate in use of the facility for the duration of its projected life. The contracts shall not constitute guarantees of costs or duration of serviceability of the proposed facility. The contracts may provide for annual adjustments to reflect changes in the relative contribution rates of municipalities to the waste stream feeding the disposal facility. No capital contribution obligation shall extend beyond fifteen (15) years. Additional contracts for capital participation may be proposed and entered into after the expiration of the initial agreement.

(5) Any municipality which indicates its intent not to participate in a proposed facility shall be barred from later participation without the consent of the board of county commissioners and without payment of a capital contribution adequate to finance the cost of additional capacity

adequate to accommodate the waste stream generated within the municipality. The amount and method of payment of the capital contribution shall be established by the board of county commissioners.

(6) Any municipality which elects to participate in a given solid waste processing facility, but later elects to withdraw from said project, may do so, but shall remain obligated for any capital costs incurred in its behalf, but may receive partial credit for operational economies created by its withdrawal. The burden of proof of the extent of operational economies shall rest upon the withdrawing municipality.

(7) Major solid waste generators located outside participating municipalities shall be treated in the same manner as municipalities concerning commitments to waste facility capacity. Boards of county commissioners are authorized to enter into contracts with major solid waste generators for the expected duration of operation of any solid waste processing facility. [I.C., § 31-4407A, as added by 1987, ch. 213, § 3, p. 454.]

**31-4408. Existing and future systems — Jurisdiction of commissioners — Disposition of waste on own land.** — Solid waste disposal systems now in existence or hereafter established and maintained and/or operated by other than a city shall come under the jurisdiction of the board of county commissioners, and shall be maintained and/or operated only as provided in this act. Every owner of land who disposes of solid waste on his own land shall obtain a written permit from the board of county commissioners for such disposal. [1970, ch. 104, § 8, p. 259; am. 1971, ch. 61, § 8, p. 137.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4405.

**31-4409. Joint operation by counties.** — Any maintenance and/or operation of a solid waste disposal system required by this act may be done jointly with any other county or counties. [1970, ch. 104, § 9, p. 259; am. 1971, ch. 61, § 9, p. 137.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4405.

**31-4410. Disposal of waste at place other than waste disposal system — Misdemeanor — Civil damages — Venue of action.** — It shall be a misdemeanor, except at solid waste disposal systems located, maintained and operated as provided by this act, for any person to throw away, dump or discard any type or nature of solid waste on any public lands, rights of way of any kind, or private land of another. In addition to the criminal penalties for violation of this section, civil damages in an amount of three (3) times the actual damage shall be imposed upon the person so convicted to be used to restore the lands to their original state. Such civil



actions shall be brought in and for the county in which the violation occurred, and any remainder of damages collected after restoration shall be used for maintenance and operation of solid waste disposal systems. [1970, ch. 104, § 10, p. 259; am. 1971, ch. 61, § 10, p. 137.]

STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4405.  
**Effective Dates.** — Section 11 of S.L. 1970, ch. 104 declared an emergency and provided that the act should become effective on and after its passage and approval and retroactive to January 1, 1970.

**31-4411. Preexisting contracts — Validation.** — Any contract for the acquisition, establishment, operation or maintenance of a solid waste disposal system, heretofore entered into by any public agency, and all acts and proceedings heretofore taken by the county commissioners or other contracting authority of any public agency in connection therewith, are hereby validated, ratified and declared to be binding and effective in accordance with their terms, notwithstanding any failure of such contract, or said board of county commissioners or other contracting authority to comply with the terms of this act, chapter 10, title 31, or chapter 19, title 54, Idaho Code. [I.C., § 31-4411, as added by 1979, ch. 109, § 3, p. 345.]

STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1970, ch. 104 and 1979, ch. 109, compiled as §§ 31-4401 — 31-4411.  
**Effective Dates.** — Section 5 of S.L. 1979, ch. 109 declared an emergency. Approved March 22, 1979.

CHAPTER 45

\* POLLUTION CONTROL FINANCING

SECTION.  
31-4501. Short title.  
31-4502. Declaration of necessity and purpose — Liberal construction.  
31-4503. Definitions.  
31-4504. Powers.  
31-4505. Bonds.  
31-4506. Security for revenue bonds.  
31-4507. Payment of revenue bonds — Nonliability of state and county.  
31-4508. Taxation.  
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SECTION.  
31-4510. Powers not restricted — Law complete in itself — Election.  
31-4511. Investment of funds.  
31-4512. Bonds eligible for investment.  
31-4513. Exemption from construction and bidding requirements for public buildings.  
31-4514. Joint operation.  
31-4515. Tax exemption.  
31-4516. Bond elections — Validation of elections and bonds.

**31-4501. Short title.** — This act may be referred to and cited as the "Idaho Pollution Control Financing Act." [1975, ch. 52, § 1, p. 105.]

## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1975, ch. 52, compiled as §§ 31-4501 — 31-4515.

**Cross References.** — Environmental Protection and Health Act, § 39-101 et seq.

## RESEARCH REFERENCES

**Am. Jur.** — 56 Am.Jur.2d, Counties, §§ 402-404, 412 et seq.

**31-4502. Declaration of necessity and purpose — Liberal construction.** — (a) The legislature of the state of Idaho hereby finds:

- (i) that environmental damage seriously endangers the public health and welfare;
- (ii) that such environmental damage results from air, water, and other resource pollution and from public water supply, solid waste disposal, noise and other environmental problems;
- (iii) that to reduce, control and prevent such pollution and problems, quality standards have been established necessitating the employment of antipollution devices, equipment and facilities, and stringent time schedules have been and will be imposed for compliance with such standards;
- (iv) that it is desirable to provide methods of financing the costs of acquiring, constructing, installing and equipping facilities designed for environmental pollution control, including the acquisition of all technological facilities and equipment necessary or convenient for pollution control; and
- (v) that the method of financing provided in this act is therefore in the public interest and serves a public purpose in protecting and promoting the health and welfare of the citizens of this state by reducing, controlling and preventing environmental damage.

(b) It is the purpose of this act, as more specifically described in later sections, to authorize counties to acquire, construct, install, equip, own, finance and lease environmental pollution control facilities, including the acquisition of all technological facilities and equipment necessary or convenient for pollution control, to be financed for, or to be sold, leased or otherwise disposed of to persons, associations or corporations other than municipal corporations or other political subdivisions, to the end that the counties may be able to promote the health and welfare of the people of this state; it is not intended by this act that any county shall itself be authorized to operate any industrial or commercial enterprise or any such environmental pollution control facilities.

(c) This act shall be liberally construed to accomplish the intentions expressed herein. [1975, ch. 52, § 2, p. 105.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4503. Definitions.** — In this act, unless the context otherwise clearly requires, the terms used herein shall have the meanings ascribed to them as follows:

- (a) "Board" means the board of county commissioners of any county.
- (b) "County" means any county of the state of Idaho.
- (c) "Person" means any individual, partnership, copartnership, firm, company, corporation (including public utilities), association, joint stock company, trust, estate, or any other legal entity, or their legal representatives, agents or assigns, other than municipal corporations or other political subdivisions.
- (d) "Pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, land pollution, solid waste pollution, thermal pollution, radiation contamination, or noise pollution as determined by the various standards prescribed by this state or the federal government.
- (e) "Pollution control facility" or "facilities" means all technological facilities and equipment necessary or convenient for pollution control, including any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment or any combination thereof, and all real and personal property deemed necessary therewith, having to do with or the end purpose of which is, reducing, controlling or preventing pollution.
- (f) "Project costs" as applied to pollution control facilities financed under the provisions of this act means and includes all or any part of the sum total of all reasonable or necessary costs incidental to the acquisition, construction, installation and equipping of such pollution control facilities including without limitation the cost of studies and surveys; plans, specifications, architectural and engineering services; legal, organizations, marketing or other special services; financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings and all other necessary and incidental expenses including an initial bond and interest reserve together with interest on revenue bonds issued to finance such pollution control facilities to a date six (6) months subsequent to the estimated date of completion.
- (g) "Finance" or "financing" means the issuing of revenue bonds pursuant to authority herein contained by a county for the purpose of using substantially all of the proceeds to pay all or any part of project costs or to reimburse any person for all or any part of project costs; provided, that title to or in any pollution control facility so financed may at all times remain in a person other than the county, and in such case the revenue bonds of the county shall be secured by a pledge of one (1) or more notes, debentures, bonds or other obligations of such person. [1975, ch. 52, § 3, p. 105.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

The words enclosed in parentheses so appeared in the law as enacted.



**31-4504. Powers.** — Each county shall have the following powers together with all powers incidental thereto or necessary for the performance thereof:

(a) To determine the location of any pollution control facility, whether upon real estate owned by the county or by any person, and the manner of construction of any pollution control facility to be financed under the provisions of this act, and to acquire, construct, install, equip, own, finance, lease and dispose of the same, to enter into contracts for any and all of such purposes, to designate a person as its agent to determine the location and manner of construction of a pollution control facility undertaken by such person under the provisions of this act and as agent of the county, to acquire, construct, install, equip, own, lease and dispose of the same and to enter into contracts for any and all of such purposes;

(b) To lease or sell to a person any or all of the pollution control facilities upon such terms and conditions as the board shall deem proper, and to charge and collect rent or other payments therefor and to terminate any such lease or sales agreement upon the failure of the lessee or other contracting party to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods and at such rent as shall be determined by the board and/or to purchase any or all of the pollution control facilities for a nominal amount or otherwise or that at or prior to the payment of all of the revenue bonds issued by the county for the financing of such pollution control facilities the county may convey any or all of the pollution control facilities to the lessee or lessees thereof with or without consideration;

(c) To issue revenue bonds and to refund the same, all as provided for in this act;

(d) Generally to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and services furnished or to be furnished by any pollution control facility or any portion thereof and to contract with any person, firm or corporation or other body public or private in respect thereof;

(e) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, manager and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(f) To refund outstanding obligations incurred by any person to finance the cost of a pollution control facility including obligations incurred for pollution control facilities undertaken and completed prior to or after the enactment of this act when the authority finds that such financing is in the public interest;

(g) To receive and to pledge as security for the payment of any bonds issued hereunder, any lease, purchase agreement, note, debenture, bond or other obligation by or on behalf of any person;

(h) To make loans to any person for the purpose of paying or reimbursing project costs in accordance with an agreement between the county and such person; and

(i) To do all things necessary and convenient to carry out the purposes of this act.

No county shall have power to operate any pollution control facility as a business other than as a lessor. Any lease of a pollution control facility entered into pursuant to the provisions of this act shall be for a term not shorter than the longest maturity of any revenue bonds issued to finance such pollution control facility or a portion thereof and shall provide for rentals adequate to pay the principal of and interest and premiums, if any, on such revenue bonds as the same fall due and to create and maintain such reserves and accounts for depreciation, if any, as the board in its discretion shall determine to be necessary.

In the event a member of a board of county commissioners is an officer, employee or stockholder of the "person" as defined in section 31-4503(c), Idaho Code, with whom the county proposes to contract under the provisions of the Idaho pollution control financing act with respect to the acquisition and financing of pollution control facilities and the issuance of revenue bonds, such member shall disclose such status and interest to the board of county commissioners at a public meeting and shall abstain from voting on all matters before the board of county commissioners related thereto. [1975, ch. 52, § 4, p. 105; am. 1978, ch. 265, § 1, p. 590.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

The Idaho Pollution Control Financing Act, referred to in the final paragraph of this

section, is compiled as §§ 31-4501 — 31-4516.

**Effective Dates.** — Section 4 of S.L. 1978, ch. 265 declared an emergency. Approved March 28, 1978.

**31-4505. Bonds.** — All revenue bonds authorized to be issued hereunder may be issued as serial bonds or as term bonds or a combination of both types. All revenue bonds so issued shall be payable solely out of the revenues and receipts derived by the county from the pollution control facilities provided with the proceeds thereof as may be designated in the proceedings of the board under which the revenue bonds shall be authorized to be issued, provided that such revenue bonds shall not be secured by the full faith and credit or the taxing power of the state of Idaho or of any political subdivision thereof, and such limitation shall be plainly printed on the face of each such revenue bond. Such revenue bonds may be executed and delivered by the county at any time and from time to time in such amounts, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such time or times and at such place or places whether within or without the state of Idaho and evidenced in such manner, may bear interest at such rate or rates per annum without regard to any interest rate limitation appearing in any other law, may be executed by the manual or facsimile signatures of such officers of the county, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the board under which the revenue bonds shall be

authorized to be issued. If deemed advisable by the board there may be retained in the proceedings under which any such revenue bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings, but nothing herein contained shall be construed to confer on any county the right or option to redeem any such revenue bonds except as may be provided in the proceedings under which they shall be issued. Any revenue bonds issued hereunder may be sold at public or private sale for such price and in such manner and from time to time as may be determined by the board, and the county may pay, but solely and only from the proceeds of any such revenue bonds, all expenses, premiums and commissions which the board may deem necessary or advantageous in connection with the issuance thereof. Issuance by any county of one (1) or more series of revenue bonds for one (1) or more purposes under this act shall not preclude it from issuing other revenue bonds in connection with the same pollution control facility or any other pollution control facility or for any other purpose hereunder, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issue of revenue bonds. Any revenue bonds issued hereunder at any time outstanding may at any time and from time to time be refunded by the issuance of refunding bonds in such amount as the board may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums, commissions, service fees and other expenses necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same pollution control facility or separate pollution control facilities or for any other purpose hereunder, and regardless of whether or not the revenue bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. All such revenue bonds and the interest coupons applicable thereto, if any, are hereby made and shall be construed to be negotiable instruments.

The resolution authorizing the issuance of any revenue bonds hereunder and the execution of an indenture as security therefor shall be published one (1) time in a newspaper of general circulation in the county. Any such indenture, or other instrument authorized in such resolution to be executed, may be incorporated as an exhibit to such resolution but need not be published as part of the resolution. For a period of thirty (30) days from the date of such publication any person in interest may file suit in any court of competent jurisdiction to contest the regularity, formality or legality of the proceedings authorizing the revenue bonds, or the legality of such resolution and its provisions or of the revenue bonds to be issued pursuant thereto and



the provisions securing the revenue bonds. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the revenue bonds or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the revenue bonds and the provisions for their payment shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matters. [1975, ch. 52, § 5, p. 105.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4506. Security for revenue bonds.** — The principal of, and interest and premiums, if any, on any revenue bonds issued hereunder shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable and may also be payable out of proceeds from the sale of the pollution control facility acquired with proceeds of such revenue bonds, but shall not be secured by the full faith and credit or the taxing power of the state of Idaho or of any political subdivision thereof. The resolution under which the revenue bonds are authorized to be issued and any indenture executed as security for the revenue bonds, may contain any agreements and provisions respecting the maintenance of the properties covered thereby, the fixing and collection of rents for any portions thereof leased by the county to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, including the designation of a trustee, which may be a bank or trust company, the principal place of business of which may be within or without the state of Idaho, all as the board shall deem advisable and not in conflict with the provisions hereof. Each pledge and agreement made for the benefit or security of any of the revenue bonds issued hereunder shall continue effective until the principal of, and interest and premiums, if any, on the revenue bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. In the event of default in such payment or in any agreements of the county made as a part of the contract under which the revenue bonds were issued, whether contained in the proceedings authorizing the revenue bonds or in any indenture executed as security therefor, said payment or agreement may be enforced by suit, mandamus or the appointment of a receiver in equity, or any one (1) or more of said remedies. [1975, ch. 52, § 6, p. 105.]

**31-4507. Payment of revenue bonds — Nonliability of state and county.** — Revenue bonds passed under the provisions of this act shall not be deemed to constitute a debt or liability of the state or of any political subdivision, but shall be payable solely from the funds herein provided therefor. The issuance of revenue bonds under the provisions of this act shall not, directly or indirectly or contingently, obligate the state or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this act shall be construed to

authorize the creation of a debt of the state or of the county authorizing the issuance of such revenue bonds within the meaning of the constitution or statutes of the state of Idaho and all revenue bonds issued pursuant to the provisions of this act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any indenture executed as security therefor, and that such revenue bonds are not secured by the full faith and credit or the taxing power of the state of Idaho or of any political subdivision thereof. Neither the state nor the county authorizing the issuance thereof shall in any event be liable for the payment of the principal or of interest or premiums, if any, on any such revenue bonds. No breach of any such pledge, obligation or agreement may impose any pecuniary liability upon the state or the county authorizing the issuance thereof or any charge upon their general credit or against their taxing power. [1975, ch. 52, § 7, p. 105.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4508. Taxation.** — To the extent permitted by the constitution the property acquired by any county pursuant to this act is exempt from taxation except that during any period that such property is leased by or title thereto is retained under an installment purchase contract by such county taxes shall be payable to the same extent as if it were owned by such lessee and such installment purchaser and such taxes shall be paid by such lessee or installment purchaser. [1975, ch. 52, § 8, p. 105.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4509. Conveyance of title to lessee.** — At or prior to the time the principal of and interest on any revenue bonds issued hereunder to provide a particular pollution control facility have been fully paid, the county may execute such deeds and conveyances as are necessary and required to convey its right, title and interest in such pollution control facilities to any person, provided that if such conveyance is made prior to when the revenue bonds are fully paid, the county has determined that adequate provision has been made for the payment of principal and interest on the bonds as they become due. [1975, ch. 52, § 9, p. 105.]

**31-4510. Powers not restricted — Law complete in itself — Election.** — Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which any county might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice or approval shall be required for the issuance of any revenue bonds or any instrument as security therefor, except that no revenue bonds shall be issued hereunder

until the board shall by resolution adopted by a majority of the board determine that the interest of the county and the public interest or necessity demand the acquisition, construction, installation and equipment of pollution control facilities to be financed for or to be sold, leased or otherwise disposed of to persons, associations or corporations other than municipal corporations or other political subdivisions, whereupon the board shall order the submission of the proposition of issuing such revenue bonds for the purposes set forth in said resolution to the vote of the qualified electors of the county as defined in section 34-104, Idaho Code, at an election to be held subject to the provisions of section 34-106, Idaho Code. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the revenue bonds are proposed to be issued, the amount of principal of the revenue bonds, and the source of revenues pledged to the payment of said bonds.

Such resolution shall also fix the date upon which such election shall be held, subject to the provisions of section 34-106, Idaho Code, the manner of holding the same and the method of voting for or against the issuance of the revenue bonds. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the board, or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the board may be consolidated for elections held hereunder. A notice of election shall be published once a week for two (2) consecutive weeks, the first publication shall be not less than twelve (12) days prior to the election, and the last publication of which shall be at least five (5) days prior to the date set for said election, in the newspaper of general circulation within the county in which legal notices of the county are customarily published, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of county elections to the extent the same shall apply and shall make their returns to the board. The returns thereof shall be canvassed and the results thereof declared as provided in chapter 12, title 34, Idaho Code.

In the event that it shall appear from said returns that a majority of the qualified electors of the county who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the county shall thereupon be authorized to issue and sell such revenue bonds of the county, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided. [1975, ch. 52, § 10, p. 105; am. 1978, ch. 265, § 2, p. 590; am. 1995, ch. 118, § 45, p. 417.]



## STATUTORY NOTES

**Effective Dates.** — Section 4 of S.L. 1978, ch. 265 declared an emergency. Approved March 28, 1978.

**31-4511. Investment of funds.** — Each county issuing revenue bonds hereunder may invest any funds in bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of the United States of America; in certificates of deposit or time deposits constituting direct obligations of any bank as defined by the Idaho Bank Act, provided, however, that investments may be made only in those certificates of deposit or time deposits in banks which are insured by the Federal Deposit Insurance Corporation, if then in existence; or in short term discount obligations of the Federal National Mortgage Association. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. [1975, ch. 52, § 11, p. 105.]

## STATUTORY NOTES

**Compiler's Notes.** — The words "Idaho Bank Act" refer to S.L. 1925, ch. 133, which was repealed by S.L. 1979, ch. 41, § 1. For the present "Idaho Bank Act," see § 26-101 et seq.

**31-4512. Bonds eligible for investment.** — The state and all counties and cities and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, monies or other funds belonging to them or within their control in any revenue bonds issued pursuant to this act. [1975, ch. 52, § 12, p. 105.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4513. Exemption from construction and bidding requirements for public buildings.** — A pollution control facility is not subject to any requirements relating to public buildings, structures, grounds, works, or improvements imposed by the Idaho Code, or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale, or other disposition of property of any county is not applicable to any action taken under authority of this act. [1975, ch. 52, § 13, p. 105.]

STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4514. Joint operation.** — The powers herein conferred upon counties under this act may be exercised by two (2) or more counties acting jointly. [1975, ch. 52, § 14, p. 105.]

STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

**31-4515. Tax exemption.** — Revenue bonds and the interest thereon, issued pursuant to the authority contained in this act, shall be exempt from taxation under the Idaho income tax law. [1975, ch. 52, § 15, p. 105.]

STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

Section 16 of S.L. 1975, ch. 52, read: "If any one or more sections or provisions of this act, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this act and the application thereof to persons or circumstances

other than those to which it is held to be invalid shall not be affected thereby, it being the intention of this legislature to enact the remaining provisions of this act notwithstanding such invalidity."

**Effective Dates.** — Section 17 of S.L. 1975, ch. 52 declared an emergency. Approved March 18, 1975.

**31-4516. Bond elections — Validation of elections and bonds.** — All bond elections conducted by counties pursuant to authority contained in section 31-4510, Idaho Code, prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legal obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect. [I.C., § 31-4516, as added by 1978, ch. 265, § 3, p. 590.]

STATUTORY NOTES

**Compiler's Notes.** — For words "this act," see Compiler's notes, § 31-4501.

ch. 265 declared an emergency. Approved March 28, 1978.

**Effective Dates.** — Section 4 of S.L. 1978,

## CHAPTER 46

## COUNTY JUSTICE FUND

## SECTION.

31-4601. Purpose.

31-4602. Justice fund establishment.

31-4603. Procedure for establishment.

**31-4601. Purpose.** — The legislature recognizes that the counties of the state perform vital functions in administering and delivering law enforcement services to all residents of the state. The legislature further finds it is necessary that the boards of county commissioners of the counties of the state be able to address the needs of county-provided components of the justice system by funding them at levels which do not compromise the performance of the justice system as a whole and which advance the interests of the public, while protecting the rights of individuals involved with the justice system. [I.C., § 31-4601, as added by 1990, ch. 216, § 1, p. 579.]

**31-4602. Justice fund establishment.** — The board of county commissioners of any county may, in conjunction with development of their annual budget, by resolution adopted at a public meeting of the board, establish a county justice fund to provide funding for the operation of the county sheriff's department, construction, remodeling, operation and maintenance of county jails, juvenile detention facilities and/or county courthouses, operation of the prosecuting attorney's office, provision of public defender service and otherwise court-appointed counsel, and operation of the office of the clerk of the district court, to the extent that operation of that office provides support for the district court. The justice fund shall be separate and distinct from the county current expense fund and expenditures from the justice fund shall be solely dedicated to the purposes set forth in this section.

At the discretion of the board of county commissioners, funds deposited in the county justice fund may be allowed to accumulate over a period of years for designated capital improvements or be expended on a regular basis. [I.C., § 31-4602, as added by 1990, ch. 216, § 1, p. 579.]

**31-4603. Procedure for establishment.** — (1) If a board of county commissioners desires to establish a county justice fund, it shall publish notice of intent to do so in conjunction with the proposed budget publication required in section 31-1604, Idaho Code, and shall depict such proposal in the proposed county budget in a manner consistent with the provisions of section 31-1603, Idaho Code.

(2) Establishment of a county justice fund shall proportionately reduce the allowable property tax charges for remaining expenses in the county current expense fund. For purposes of achieving a proportionate reduction, the following procedure shall be followed:

(a) Prior to the September budget hearing required by section 31-1604, Idaho Code, and upon the request of the board of county commissioners,



the budget officer shall identify and separate the appropriations for the services and operations outlined in section 31-4602, Idaho Code, from the previous year's budget, including estimated portions of the general reserve appropriation and court-ordered expenditures for such purposes. Such figure, and the percentage that such figure constitutes of the whole of the current expense fund expenditures, shall be certified by the clerk of the county and shall be transmitted to the board of county commissioners.

(b) The board of county commissioners shall review the submittal by the clerk and shall, upon completion of such review, adopt a resolution creating a county justice fund, which resolution shall certify, to the accuracy of two (2) decimal places, the percentage that authorized justice fund appropriations in the prior budget year are of total current expense fund appropriations for that year. If the board of county commissioners believes the previous year's budget is not typical, it may petition the state tax commission for an administrative ruling setting the percentage of justice fund expenditures based upon a more extended history of such budgeted expenditures.

(c) The percentage derived by completion of the steps called for in subsection (2) (b) of this section shall be multiplied by the total of property tax charges levied to support the current expense fund as a whole. The product of this multiplication shall be subtracted from the entire property tax charge for the current expense fund and shall constitute the justice fund allocation. The remainder, after the justice fund allocation has been subtracted, shall constitute a new property tax base for the current expense fund. Allowable property tax charges for the current expense fund in the year the justice fund is created shall be determined upon the base established in this section. In subsequent years, after a county has established a justice fund, the maximum levy authority for the current expense fund shall be twenty hundredths percent (.20%) of market value for assessment purposes as provided for in section 63-805, Idaho Code.

(3) Additional revenues, other than those derived from property taxation, shall be allocated to the current expense fund or the justice fund, respectively, in accordance with their association with the functions performed by offices supported by the respective funds. Where revenue sources are not clearly attributable to either justice or current expense fund activities, they shall be apportioned to the current expense fund or justice fund by the board of county commissioners to meet the greatest funding need in each local jurisdiction. [I.C., § 31-4603, as added by 1990, ch. 216, § 1, p. 579; am. 1996, ch. 208, § 5, p. 658; am. 1996, ch. 322, § 17, p. 1029; am. 1997, ch. 117, § 3, p. 298.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 1996 acts — ch. 208, § 5, effective July 1, 1996, and ch. 322, § 17, effective January 1, 1997 — which appear to conflict. That conflict was resolved by the 1997 amendment of this section.

The 1996 amendment, by ch. 208, § 5, in

subdivision (2)(c), in the third sentence, deleted “, which current expense and justice fund bases shall continue to be subject to the provisions of section 63-2220, Idaho Code” following “current expense fund”.

The 1996 amendment, by ch. 322, § 17, in subdivision (2)(c), in the former language at

the end of the third sentence, see above, substituted "section 63-802" for "section 63-2220" and at end of the last sentence in subdivision (2)(c), substituted "section 63-805" for "section 63-903".

**Effective Dates.** — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be effective

July 1, 1996. Approved March 12, 1996.

Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1-40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

## CHAPTER 47

### MUSEUM BOARDS

#### SECTION.

31-4701. Creation of county museum board.

31-4702. Order creating board — Appointment and selection of members.

31-4703. Time for creation.

31-4704. Duties of county museum board — Bonds of members — Meetings — Further duties.

#### SECTION.

31-4705. Secretary and treasurer of county museum board.

31-4706. Budget of funds for county museum purposes — Maintenance of idle property.

31-4707. Expenses of board members.

**31-4701. Creation of county museum board.** — A county museum board may be created as follows:

(1) In addition to the procedures provided in subsections (2), (3) and (4) of this section, the county commissioners may adopt a resolution and incorporate in its minutes to signify that it is the intention of the board of county commissioners to create a county museum board in accordance with the provisions of this chapter. The board of county commissioners shall fix a date, not less than three (3) nor more than six (6) weeks from the date of the adoption of the resolution for a public hearing, and shall order the clerk of the board to publish notice of the hearing in one or more newspapers of general circulation in the county, which notice shall include the time and place of the hearing at which the board of county commissioners will hear any person or persons interested upon the matter of whether a county museum board shall be created pursuant to this chapter. If after the hearing provided for in this section, the board of county commissioners shall then deem it for the best interests of the county that a county museum board be created, the county commissioners shall enter an order to that effect and calling an election upon the formation of the proposed county museum board as provided in this section.

(2) Any person or persons may file a petition for the formation of a county museum board with the clerk. The petition which may be in one or more papers shall be signed by not less than ten percent (10%) of the registered voters residing within the county.

(3) The clerk shall, within ten (10) days after the filing of the petition, estimate the cost of advertising and holding the election provided in this section and notify in writing the person or any one of the persons filing the petition as to the amount of the estimate. The person or persons shall within twenty (20) days after receipt of the written notice deposit the estimated amount with the clerk in cash, or the petition shall be deemed withdrawn. If the deposit is made and the county museum board is formed, the person

or persons so depositing the sum shall be reimbursed from the first moneys collected by the county museum board from the taxes authorized to be levied by this act.

(4) Within thirty (30) days after the filing of the petition together with the map and the making of the cash deposit, the county commissioners shall determine whether or not they substantially comply with the requirements of this section. If the county commissioners find that there has not been substantial compliance with the requirements, the county commissioners shall enter an order to the effect specifying the particular deficiencies, dismissing the petition and refunding the cash deposit. If the county commissioners find that there has been substantial compliance with the requirements, the county commissioners shall forthwith enter an order to that effect and calling an election upon the formation of the proposed county museum board as provided in this section.

(5) If the county commissioners order an election as provided in this section, the election shall be conducted on the first Tuesday succeeding the first Monday of November in any year, and in accordance with the general election laws of the state, except as hereinafter provided. The county commissioners shall establish election precincts, design and print voter's oaths, ballots and other necessary supplies, appoint election personnel and by rule and regulation provide for the conduct and tally of the election. Each registered voter of the county shall be entitled to vote in the election. The clerk shall give notice of the election which notice shall clearly state the question of whether a county museum board shall be formed and shall state the date of the election. The notice shall be published once each week for three (3) successive publications prior to the election in a newspaper published within the county.

(6) Immediately after the election, the judges at the election shall forward the ballots and results of the election to the clerk. The county commissioners shall canvass the vote within ten (10) days after the election. If forty-five percent (45%) or more of the votes cast at the election are against the formation of the county museum board, the county commissioners shall enter an order so finding and declaring that the county museum board shall not be formed. If more than fifty-five percent (55%) of the votes cast at the election are in favor of forming the county museum board, the county commissioners shall enter an order so finding, declaring the county museum board duly organized. The county commissioners shall cause one (1) certified copy of the order to be filed in the office of the county recorder of the county and shall cause one (1) certified copy of the order to be transmitted to the governor. Immediately upon the entry of the order, the organization of the county museum board shall be complete.

(7) After the election, the validity of the proceedings hereunder shall not be affected by any defect in the petition, if any, or in the number or qualification of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the organization of the county museum board after six (6) months have expired from the date of entering the order declaring the formation of the county museum board. [I.C., § 31-4701, as added by 1990, ch. 393, § 1, p. 1101; am. 1991, ch. 322, § 1, p. 837.]



## STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1990, ch. 393, which is compiled as §§ 31-4701 — 31-4707.

**31-4702. Order creating board — Appointment and selection of members.** — If the board enters an order creating a county museum board pursuant to subsection (6) of section 31-4701, Idaho Code, it shall immediately appoint five (5) persons to membership thereof, and make its action a matter of record. The members shall as nearly as possible be selected from the different localities of the county.

Appointments shall be made as follows: Three (3) members shall be appointed for a term of two (2) years and two (2) members shall be appointed for a term of three (3) years. Thereafter, each appointment shall be made for terms of three (3) years. Appointments shall expire on the third Monday in January. Any vacancy occurring on such county museum board shall be filled by appointment by the county commissioners at their first regular meeting after the occurrence of such vacancy. [I.C., § 31-4702, as added by 1990, ch. 393, § 1, p. 1101.]

**31-4703. Time for creation.** — The county museum board may be created under the provisions of this chapter at any time before the first Monday in July in any year. [I.C., § 31-4703, as added by 1990, ch. 393, § 1, p. 1101.]

**31-4704. Duties of county museum board — Bonds of members — Meetings — Further duties.** — The county museum board shall be charged with the care and custody of all property belonging to the county and used for museum purposes, and shall be responsible for all moneys received by it, raised by tax levy or levies for museum purposes as well as all receipts from the operation of the museum and any other moneys received from other sources for museum purposes. Each member of the county museum board shall file with the board of county commissioners a bond in the sum of not less than one thousand dollars (\$1,000) to be approved by the board of county commissioners. It shall meet at its place of business on the first Monday of January each year, and thereafter bimonthly on the first Monday of the month, except as herein otherwise provided; provided, that it shall meet on the first Monday after the creation of such board under the provisions hereof.

It shall safely keep or cause to be safely kept all moneys coming into its care, custody or possession in strict compliance with the provisions of the public depository law of this state. It shall formulate in writing and file in its office all plans adopted by it from time to time in connection with the conduct of the business of the county museum, and also file a copy of the same with the board of county commissioners of the county. It shall keep or cause to be kept proper records of its proceedings, business transactions, and true and proper accounts of all moneys received by it and expended or on hand; and it shall require proper vouchers evidencing all disbursements

of money. The records of the board shall be open to inspection by any taxpayer or voter within the county during all regular office hours. The board shall publish in at least one (1) issue of the official newspaper of the county a detailed statement of all moneys received and expended in connection with the operation of any museum.

It shall take charge of and manage all such property as the county may have acquired or set aside for museum purposes. It may recommend to the board of county commissioners that such board purchase such real and personal property as may be needed for museum purposes. It shall have power to employ labor, award prizes, make exhibition contracts, fix and charge admission and entrance fees. It shall fix the salaries of the secretary and treasurer and prescribe the time and manner of payment. The county museum board shall not have the power to create any indebtedness in excess of the amount to be derived from the special levies for each year and the estimated income from annual museum receipts, nor shall it mortgage or otherwise pledge or encumber any of the real or personal property owned by the county and used for museum purposes. [I.C., § 31-4704, as added by 1990, ch. 393, § 1, p. 1101.]

**31-4705. Secretary and treasurer of county museum board. —**

The county museum board shall select and employ a competent secretary whom they shall vest with general managerial powers subject to the provisions of this chapter. It shall also appoint a treasurer. The office of secretary may be combined with the office of treasurer and held by the same person. The treasurer shall be required to furnish a bond in such sum as may be fixed by the board of county commissioners, and when furnished to be approved by it. [I.C., § 31-4705, as added by 1990, ch. 393, § 1, p. 1101.]

**31-4706. Budget of funds for county museum purposes — Maintenance of idle property. —** For the purpose of determining what funds must be raised by taxes for county museum purposes, the county museum board shall meet at such time as may be provided by law for the preparation of budgets, and shall make a budget of the amounts required for museum purposes, including all salaries to be paid for the current year, and shall deduct therefrom any balance remaining in its treasury, and shall then certify to the board of county commissioners the amount of said budget. The board of county commissioners may make a levy upon all taxable property in the county in the amount requested by the county museum budget. No levy for the purposes of this chapter shall exceed three-hundredths percent (.03%) on each dollar of market value for assessment purposes of taxable property in the county. When such taxes have been collected, the same shall be paid to the treasurer of the county museum board to be used for the purposes authorized by this chapter. Upon the creation and appointment of the museum board by the county commissioners, it hereby becomes a taxing unit separate and distinct from any other taxing unit or tax levy within the county under the provisions of the Idaho budget law and as such is empowered to issue tax anticipation notes or warrants as provided by law for maintaining, carrying on, conducting, payment of obligations and all

other necessary expenses, incurred or to be incurred in maintaining a museum. It may be the duty of the county commissioners of any county, where property for county museum purposes is located, to levy an amount sufficient to maintain and protect such museum grounds and property. [I.C., § 31-4706, as added by 1990, ch. 393, § 1, p. 1101; am. 1991, ch. 52, § 1, p. 95; am. 1996, ch. 208, § 6, p. 658; am. 1996, ch. 322, § 18, p. 1029; am. 1997, ch. 117, § 4, p. 298.]

## STATUTORY NOTES

**Amendments.** — This section was amended by two 1996 acts — ch. 208, § 6, effective July 1, 1996, and ch. 322, § 18, effective January 1, 1997 — which appear to conflict. That conflict was resolved by the 1997 amendment of this section.

The 1996 amendment, by ch. 208, § 6, in the next-to-last sentence, deleted “; and the district’s first levy shall be subject to the provisions of section 63-2220(1)(iii), Idaho Code,” following “within the county”.

The 1996 amendment, by ch. 322, § 18, in the former language in the middle of the next-to-last sentence, see above, substituted “section 63-802(1)(c)” for “section 63-2220(1)(iii)”.

**Effective Dates.** — Section 2 of S.L. 1991, ch. 52 declared an emergency and provided that the act would be effective retroactive to January 1, 1991. Approved March 18, 1991.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 73 of S.L. 1996, ch. 322 provided that the act should be in full force and effect on and after January 1, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1-40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

**31-4707. Expenses of board members.** — The members of the county museum board shall be paid their actual and necessary expenses out of the funds provided for museum purposes, upon approval of claims for the same by the board of county commissioners. [I.C., § 31-4707, as added by 1990, ch. 393, § 1, p. 1101.]

## CHAPTER 48

### EMERGENCY COMMUNICATIONS ACT

#### SECTION.

31-4801. Purpose.

31-4802. Definitions.

31-4803. Authority to establish and for voters to approve funding for a consolidated emergency communications system.

31-4804. Emergency communications fee.

31-4804A. Establishment of enhanced consolidated emergency communications systems.

31-4805. Establishment of joint powers board for operation of emergency communications service.

31-4806. Authorization for governing board to appoint official to supervise emergency communications service in the absence of joint powers agreement.

31-4807. Right to fee not affected by nonservice.

#### SECTION.

31-4808. Termination.

31-4809. Fund and appropriations.

31-4810. Existing joint county-wide emergency dispatch systems not affected.

31-4811. Pay phones to be converted to allow emergency calls without charge.

31-4812. Immunity and conditions of liability in providing emergency communications service.

31-4813. Prepaid calling cards.

31-4814. Confidential and proprietary data.

31-4815. Creation of Idaho emergency communications commission — Terms.

31-4816. Idaho emergency communications commission — Purposes and responsibilities.

31-4817. Idaho emergency communications commission — Mediation.



## SECTION.

31-4818. Idaho emergency communications fund — Establishment and administration.

**31-4801. Purpose.** — The legislature recognizes that providing consolidated emergency communications systems is vital in enhancing the public health, safety, and welfare of the residents of the state of Idaho. The legislature further finds that there is an obvious need for providing a means to finance the initiation, maintenance, operation, enhancement and governance of consolidated emergency communications systems.

(1) The legislature of the state of Idaho finds that:

(a) Since the original enactment of the emergency communications act in 1988, many of Idaho's communities have found that they are lacking in the resources to fully fund emergency communications systems at the local level;

(b) Changes in technology and the rapid growth of communications media have demonstrated that financing such systems solely by a line charge on subscribers to wire-line services does not reflect utilization of emergency communications systems by subscribers to wireless and other forms of communications systems;

(c) There is a need to enhance funding for the initiation and enhancement of consolidated emergency communications systems throughout the state;

(d) Utilization of cellular telephones to access emergency communications systems has substantially increased citizen access to emergency services while at the same time increasing demands upon the emergency response system;

(e) In order to protect and promote the public health and safety, and to keep pace with advances in telecommunications technology and the various choices of telecommunications technology available to the public, there is a need\* to plan and develop a statewide coordinated policy and program to ensure that enhanced 911 services are available to all citizens of the state and in all areas of the state.

(2) Therefore, it is hereby declared that the intent and purpose of the provisions of this act are to:

(a) Provide authority to counties and 911 service areas to impose an emergency communications fee on the use of both telephone lines and wireless communications systems;

(b) Provide that the emergency communications fee shall be exclusively utilized by the counties or 911 service areas electing to impose it to finance the initiation, maintenance, operation, enhancement and governance of consolidated emergency systems as well as enhanced consolidated emergency systems;

(c) Provide for the agreed-to reimbursement to telecommunications providers for their implementation of enhanced consolidated emergency communications systems by counties or 911 service areas that have implemented enhanced consolidated emergency communications systems.

[I.C., § 31-4801, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 1, p. 449; am. 2003, ch. 290, § 1, p. 784; am. 2003, ch. 311, § 1, p. 852; am. 2004, ch. 325, § 1, p. 973.]

## STATUTORY NOTES

**Amendments.** — This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 290, § 1, inserted “operation” and “and governance” and made a related stylistic change in the

second sentence of the introductory paragraph, and added subsections (1) and (2).

The 2003 amendment, by ch. 311, § 1, inserted “or 911 service areas” in subsection (2)(b).

**31-4802. Definitions.** — As used in this chapter:

(1) “Access line” means any telephone line, trunk line, network access register, dedicated radio signal, or equivalent that provides switched telecommunications access to a consolidated emergency communications system from either a service address or a place of primary use within this state. In the case of wireless technology, each active dedicated telephone number shall be considered a single access line.

(2) “Administrator” means the person, officer or agency designated to operate a consolidated emergency communications system, and to receive funds for such an operation.

(3) “Basic consolidated emergency system” means consolidated emergency systems that are not enhanced.

(4) “Consolidated emergency communications system” means facilities, equipment and dispatching services directly related to establishing, maintaining, or enhancing a 911 emergency communications service.

(5) “Emergency communications fee” means the fee provided for in section 31-4803, Idaho Code.

(6) “Enhanced consolidated emergency system” means consolidated emergency systems that provide enhanced wireless 911 service and include, but are not limited to, the technological capability to provide call back numbers, cell site locations, and the location of calls by latitude and longitude and made through the systems of wireless carriers.

(7) “Governing board” means the joint powers board, if the 911 service area is a multicounty area, or the board of county commissioners of the county or the city council if the 911 service area is a city, or both the board of county commissioners and the city council if the 911 service area includes both city and county residents but not the entire county.

(8) “911 service area” means a regional, multicounty, county or area other than a whole county in which area the residents have voted to establish a consolidated emergency communications system.

(9) “Place of primary use” means the residential street address or the primary business street address in Idaho where the customer’s use of the wireless service primarily occurs.

(10) “Telecommunications provider” means any person providing exchange telephone service to a service address within this state or any wireless carrier providing telecommunications service to any customer having a place of primary use within this state.

(11) “Wireless carrier” means a cellular licensee, a personal communications service licensee, and certain specialized mobile radio providers designated as covered carriers by the federal communications commission in 47 CFR 20.18 and any successor to such rule. [I.C., § 31-4802, as added by

1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 2, p. 449; am. 1994, ch. 86, § 1, p. 202; am. 2003, ch. 290, § 2, p. 784.]

### STATUTORY NOTES

**Legislative Intent.** — Section 3 of S.L. 1994, ch. 86 provided: “It was and is hereby declared to be the intent of the Legislature that counties may enter into joint powers agreements pursuant to the provisions of Chapter 23, Title 67, Idaho Code, to provide emergency communications services on a regional or multicounty basis. Therefore, not-

withstanding any provision of law or court ruling to the contrary, all joint powers agreements between counties to provide emergency communications services on a regional or multicounty basis existing prior to the adoption of this enactment are hereby ratified, approved and affirmed.”

**31-4803. Authority to establish and for voters to approve funding for a consolidated emergency communications system.** — (1) The board of commissioners of any county may establish a consolidated emergency communications system by virtue of authority granted by this chapter or by chapter 23, title 67, Idaho Code. The service area may be regional, multicounty, countywide, or any part or parts of the county, and may include or exclude a city or cities. If the board of county commissioners has adopted a resolution stating that the county is unable to establish a countywide consolidated emergency communications system, or if the voters reject a countywide consolidated 911 system, then a 911 service area may be established by action of any city or cities within the county. The 911 service area shall be described in the ordinance of creation. The ordinance shall further provide for an election on the question as provided in subsection (2) of this section. The ordinance of creation shall define the governing board, designate the administrator, and the agency to service the 911 calls. The costs of the election ordered by the county shall be a proper charge against the county current expense fund. The costs of the election for a 911 service area shall be a proper charge against the city or cities initiating the election.

(2) The voters of any county or 911 service area may authorize funding to support implementation of a consolidated emergency communications system pursuant to the provisions of this chapter. The authorization to provide such funding must be made by the registered voters of the county or of the 911 service area at either a primary or general election. A notice for any election shall be published for twenty (20) days as required by section 60-109, Idaho Code. A sixty percent (60%) majority of the votes cast in favor of the question shall be necessary to authorize the emergency communications fee.

(3) If a 911 system is to be financed in whole or in part by an emergency communications fee, the governing board shall submit the question to the electors of the county or 911 service area in substantially the following form:

“Shall the governing board of ..... be authorized to institute an emergency communications fee in an amount no greater than one dollar (\$1.00) per month to be used to fund an emergency telephone system, commonly known as 911 service?”

(4) No emergency communications fee for a consolidated emergency communications system shall be charged without voter approval as provided in subsection (2) of this section.



(5) Any net savings in operating expenditures realized by any taxing district utilizing a consolidated emergency communications system shall be used by that taxing district for a reduction in the property tax charges of that taxing district.

(6) If the voters of any county or 911 service area have previously approved funding of a consolidated emergency communications system in the manner provided in subsections (2) and (3) of this section, no further vote is necessary to authorize the emergency communications fee set forth in this act.

(7) Effective October 1, 2004, and every year thereafter, the emergency communications fee provided for in this act shall be reviewed and modified as required by this subsection by the board of commissioners of a countywide system or by the governing board of a 911 service area as follows:

(a) The level of the emergency communications fee shall be reviewed and, as appropriate and necessary, readjusted by action of the board of commissioners or the governing board on an annual basis. The board of commissioners or governing board shall set the level of the fee based upon the revenue requirements necessary to implement an annual budget prepared under the direction of the board of commissioners or governing board for the initiation, maintenance, operation, enhancement and governance of a consolidated emergency communications system, including both basic and, if applicable, enhanced consolidated emergency systems.

(b) The revenues from emergency communications fees shall be exclusively expended pursuant to the budget established in paragraph (a) of this subsection. Use of such revenues for any other purpose is expressly prohibited.

(c) The process of reviewing and setting the level of emergency communications fees shall be governed by the meeting and public notice provisions of section 31-710(4), Idaho Code. For the purposes of this section, the setting of a fee shall be deemed to be the promulgation of a rule such that public participation provisions of section 67-5222, Idaho Code, shall apply to the meetings of the board of commissioners or of a governing board pursuant to this section. [I.C., § 31-4803, as added by 1988, ch. 348, § 1, p. 1027; am. 1989, ch. 196, § 1, p. 492; am. 1990, ch. 200, § 3, p. 449; am. 1994, ch. 86, § 2, p. 202; am. 2003, ch. 290, § 3, p. 784.]

#### STATUTORY NOTES

**Legislative Intent.** — Section 3 of S.L. 1994, ch. 86 provided: "It was and is hereby declared to be the intent of the Legislature that counties may enter into joint powers agreements pursuant to the provisions of Chapter 23, Title 67, Idaho Code, to provide emergency communications services on a regional or multicounty basis. Therefore, notwithstanding any provision of law or court ruling to the contrary, all joint powers agree-

ments between counties to provide emergency communications services on a regional or multicounty basis existing prior to the adoption of this enactment are hereby ratified, approved and affirmed."

**Effective Dates.** — Section 2 of S.L. 1989, ch. 196 declared an emergency. Approved March 29, 1989.

Section 4 of S.L. 1994, ch. 86 declared an emergency. Approved March 14, 1994.

## OPINIONS OF ATTORNEY GENERAL

Emergency Communications Act charges pursuant to § 31-4804 were not intended to apply to the state. If applied to the state, the charges, which may be characterized on a tax in lieu of property tax, would likely be held to

violate Idaho Constitution, art. 7, § 4. OAG 89-4.

The legislature intended the tax levied in the Emergency Communications Act as an alternative to the property tax. OAG 89-4.

**31-4804. Emergency communications fee.** — (1) The emergency communications fee provided pursuant to the provisions of this chapter shall be a uniform amount not to exceed one dollar (\$1.00) per month per access line, and such fee shall be used exclusively to finance the initiation, maintenance, operation, enhancement and governance of a consolidated emergency communications system and provide for the reimbursement of telecommunications providers for implementing enhanced consolidated emergency systems as provided for in section 31-4804A, Idaho Code. All emergency communications fees collected and expended pursuant to this section shall be audited by an independent, third party auditor ordinarily retained by the governing board for auditing purposes. The purpose of the audit as related to emergency communications systems is to verify the accuracy and completeness of fees collected and costs expended.

(2) The fee shall be collected from customers on a monthly basis by all telecommunications providers that make available access lines to persons within the county, or 911 service area, and may be listed as a separate item on customers' monthly bills.

(3) The telecommunications providers shall remit such fee to the county treasurer's office or the administrator for the 911 service area based upon the 911 service area from which the fees were collected. In the event the telecommunications provider remits such fees based upon the emergency communications fee billed to the customer, a deduction shall be allowed for uncollected amounts when such amounts are treated as bad debt for financial reporting purposes.

(4) From every remittance to the governing body made on or before the date when the same becomes due, the telecommunications provider required to remit the same shall be entitled to deduct and retain one percent (1%) of the collected amount as the cost of administration for collecting the charge. Telecommunications providers will be allowed to list the surcharge as a separate item on the telephone subscriber's bill, and shall have no obligation to take any legal action to enforce the collection of any charge, nor be held liable for such uncollected amounts.

(5) Use of fees. The emergency communications fee provided hereunder shall be used only to pay for the lease, purchase or maintenance of emergency communications equipment for basic and enhanced consolidated emergency systems, including necessary computer hardware, software, database provisioning, training, salaries directly related to such systems, costs of establishing such systems, management, maintenance and operation of hardware and software applications and agreed-to reimbursement costs of telecommunications providers related to the operation of such systems. All other expenditures necessary to operate such systems and other normal and necessary safety or law enforcement functions including,



but not limited to, those expenditures related to overhead, staffing, dispatching, administrative and other day to day operational expenditures, shall continue to be paid through the general funding of the respective governing boards; provided however, that any governing body using the emergency communication fee to pay the salaries of dispatchers as of March 1, 2006, may continue to do so until the beginning of such governing body's 2007 fiscal year. [I.C., § 31-4804, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 4, p. 449; am. 2003, ch. 290, § 4, p. 784; am. 2003, ch. 311, § 2, p. 852; am. 2006, ch. 238, § 1, p. 722.]

#### STATUTORY NOTES

**Amendments.** — This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 290, § 4, substituted “emergency communications” for “telephone line user” in the heading, added the subsection designations and subsection (5), and otherwise rewrote the section.

The 2003 amendment, by ch. 311, § 2, substituted “telecommunications providers” for “wireless carriers” in the first sentence.

The 2006 amendment, by ch. 238, in subsection (5), inserted “management, maintenance and operation of hardware and software applications” and “dispatching,” and added the proviso at the end.

#### OPINIONS OF ATTORNEY GENERAL

Emergency Communications Act charges pursuant to this section were not intended to apply to the state. If applied to the state, the charges, which may be characterized on a tax in lieu of property tax, would likely be held to

violate Idaho Constitution, art. 7, § 4. OAG 89-4.

The Emergency Communications Act charge is a tax rather than a fee. OAG 89-4.

**31-4804A. Establishment of enhanced consolidated emergency communications systems.** — (1) Any county or 911 service area that has established a basic consolidated emergency system may establish an enhanced consolidated emergency system by action of the governing board of the basic consolidated emergency system.

(2) The governing boards establishing enhanced consolidated emergency systems shall request that wireless carriers serving such counties or 911 service areas collectively implement an enhanced consolidated emergency communications system within a reasonable time. When so requested, all wireless carriers serving such counties or 911 service areas shall implement enhanced consolidated emergency communications systems within a reasonable time. The governing boards and wireless carriers shall enter into agreements that:

(a) Establish the scope and purpose of the proposed enhanced consolidated emergency communications system.

(b) Provide for an agreed-to level of reimbursement for telecommunications providers for the costs of wireless carriers resulting from their implementation and operation of enhanced emergency communications systems that may include the acquisition, construction, financing, installation and operation of all equipment and facilities necessary to implement such enhanced systems.

(c) Provide that the agreed-to level of reimbursement for telecommunications providers for enhanced 911 service may include the costs and



expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(d) Provide that reimbursement to a telecommunications provider shall be nondiscriminatory and be made available to all other telecommunications providers.

Agreements shall provide for prompt reimbursement on invoices submitted by wireless carriers to the governing board. [I.C., § 31-4804A, as added by 2003, ch. 290, § 5, p. 784.]

**31-4805. Establishment of joint powers board for operation of emergency communications service.** — Within one hundred eighty (180) days following voter approval of an emergency communications fee as provided in section 31-4803, Idaho Code, a governing board or administrator may be established under a joint powers agreement pursuant to sections 67-2326 through 67-2332, Idaho Code. Such joint powers board or administrator shall be responsible for establishing, maintaining, operating, enhancing and governing a consolidated emergency communications system. Providing an emergency communications service shall be considered a governmental function. [I.C., § 31-4805, as added by 1988, ch. 348, § 1, p. 1027; am. 2003, ch. 290, § 6, p. 784.]

**31-4806. Authorization for governing board to appoint official to supervise emergency communications service in the absence of joint powers agreement.** — Whenever the electors approve imposing the emergency communications fee as provided in this chapter, but in the absence of an agreement to form a joint powers board or administrator as provided in this chapter, the governing board is hereby authorized to appoint an official or administrator to maintain, operate, enhance and govern a consolidated emergency communications system. [I.C., § 31-4806, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 5, p. 449; am. 2003, ch. 290, § 7, p. 784.]

**31-4807. Right to fee not affected by nonservice.** — All governmental entities within the county that have an already established emergency communications system using 911 call access, upon resolution duly adopted and approved and presented to the joint powers board or in their absence to the board of county commissioners, may ask that their existing emergency communication system area be excluded and such area shall be excluded from the county-wide emergency communications service but such exclusion shall not affect the right of the board of county commissioners to levy the fees as herein provided. No city or other agency shall establish an individual emergency communication system once a county-wide system as provided in this chapter has been adopted by the board of county commissioners. Whenever an area is excluded pursuant to this section, the board of county commissioners shall remit to the excluded entity one hundred percent

(100%) of the fees collected in the excluded area as provided pursuant to this chapter. Any area excluded pursuant to this section may be subsequently included upon resolution duly adopted and approved and presented to the joint powers board or, in their absence, to the board of county commissioners. [I.C., § 31-4807, as added by 1988, ch. 348, § 1, p. 1027.]

**31-4808. Termination.** — (1) Any county or joint powers board having adopted and established an emergency communications system as provided in this chapter may terminate the same for good cause.

(2) If, after the formation of any 911 service area of less than county-wide extent, the voters of the county approve 911 service for the entire county, the newly formed county-wide 911 service area shall assume all of the assets and liabilities of all 911 service areas existing in that county at the time of formation of the county-wide system. Existing 911 service areas shall have two (2) years from the date of the county-wide election to merge into the county-wide consolidated emergency communications system. [I.C., § 31-4808, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 6, p. 449.]

**31-4809. Fund and appropriations.** — The county treasurer of each county or the administrator for a 911 service area in which an emergency communications system has been established pursuant to this chapter shall establish a fund to be designated the emergency communications fund in which all fees collected pursuant to this chapter shall be deposited and such fund shall be used exclusively for the purposes of this chapter. The moneys collected and the interest earned in this fund shall be appropriated by the county commissioners, or governing board, for expenses incurred by the emergency communications system as set forth in an annual budget prepared by the joint powers board, or in their absence, the county commissioners and incorporated into the annual county budget. [I.C., § 31-4809, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 7, p. 449.]

**31-4810. Existing joint county-wide emergency dispatch systems not affected.** — Joint county-wide emergency dispatch systems that are in existence prior to July 1, 1987, shall not be affected by the provisions of this chapter. These emergency dispatch systems may continue to function as they have and shall be eligible to receive revenues generated by this chapter. [I.C., § 31-4810, as added by 1988, ch. 348, § 1, p. 1027.]

**31-4811. Pay phones to be converted to allow emergency calls without charge.** — Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to this chapter must convert every pay station telephone to permit dialing 911 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational. If modification of telephone service switching equipment is necessary to implement the provisions of this section, such modification shall be consid-

ered a cost of the emergency communications program and the provider of telephone service shall be compensated from the user fees authorized for this chapter upon application to the county, providing that such costs are approved by the public utilities commission. [I.C., § 31-4811, as added by 1988, ch. 348, § 1, p. 1027.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 2 of S.L. 1988, ch. 348, read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act."

**Effective Dates.** — Section 3 of S.L. 1988, ch. 348 declared an emergency. Approved April 6, 1988.

**31-4812. Immunity and conditions of liability in providing emergency communications service.** — In order to further the purposes of this chapter, and to encourage the development of consolidated emergency communications systems, the legislature finds that telecommunications providers making available consolidated emergency communications systems and related services shall not be subject to liability in conjunction with providing such services except on the terms stated below.

(1) No telecommunications provider shall be liable to any person for the good faith release to emergency communications system personnel of information not in the public record including, but not limited to, nonpublished or nonlisted telephone numbers.

(2) A telecommunications provider making available emergency communications systems or services, and its employees and agents, shall not be liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance or provision of consolidated emergency communications systems or services, unless such entities or persons act with malice or criminal intent, or commit reckless, willful and wanton conduct.

(3) For the purposes of this section, "reckless, willful and wanton conduct" is defined as an intentional and knowing action, or failure to act, creating an unreasonable risk of harm to another, and which involves a high degree of probability that such harm will result. [I.C., § 31-4812, as added by 1990, ch. 221, § 1, p. 588; am. 2003, ch. 290, § 8, p. 784.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1990, ch. 221 declared an emergency. Approved April 5, 1990.

**31-4813. Prepaid calling cards.** — The imposition of the emergency communications fee shall not apply to the prepaid calling cards for all forms of access fees. [I.C., § 31-4813, as added by 2003, ch. 290, § 9, p. 784.]

**31-4814. Confidential and proprietary data.** — All data submitted to governing boards by wireless carriers deemed by such carriers as



confidential and proprietary shall be deemed to be trade secrets pursuant to chapter 3, title 9, Idaho Code. [I.C., § 31-4814, as added by 2003, ch. 290, § 9, p. 784.]

**31-4815. Creation of Idaho emergency communications commission — Terms.** — (1) There is hereby created in the department of administration an Idaho emergency communications commission (hereinafter referred to as “the commission”) for the purpose of assisting cities, counties, ambulance districts and fire districts in the establishment, management, operations and accountability of consolidated emergency communications systems. Notwithstanding any other provision of law to the contrary, the commission shall, upon being constituted, exercise its powers and duties in accordance with the provisions of this section relative to consolidated emergency communications in this state established by enactment of the legislature or by private act.

(2) The commission shall be composed of thirteen (13) voting members, with eleven (11) appointed by the governor as follows: one (1) member representing the association of Idaho cities, one (1) member representing the Idaho association of counties, one (1) member representing the Idaho sheriffs’ association, one (1) member representing the Idaho chiefs of police association, one (1) member representing the Idaho fire chiefs association, one (1) member representing the Idaho prosecuting attorneys association, one (1) member representing the Idaho state emergency medical services communications center, one (1) member representing the Idaho emergency medical services association, one (1) member representing the public at large and two (2) members representing private industry service providers, one (1) from the wireless industry and one (1) from the traditional phone service industry. The commission shall also include the director of the Idaho state police or a designated representative and the adjutant general or a designated representative. One (1) representative of the attorney general shall serve as a nonvoting ex officio member.

(3) Except as provided in this subsection, members of the commission shall be appointed for a term of four (4) years. The following five (5) members shall be appointed to an initial term of two (2) years: the member representing the Idaho fire chiefs association, the member representing the Idaho state emergency medical services communications center, the member representing the Idaho emergency medical services association, the member representing the wireless industry, and one (1) member representing the public. The remaining six (6) members appointed by the governor shall be appointed for an initial term of four (4) years. Thereafter, all terms shall be for a period of four (4) years.

(4) The commission shall elect a chair and such officers as it may deem necessary and appropriate. The commission shall meet at least annually and at the call of the chair. Members of the commission shall be compensated as provided in section 59-509(b), Idaho Code. Compensation shall be paid from the emergency communications fund created in section 31-4818, Idaho Code. [I.C., § 31-4815, as added by 2004, ch. 325, § 2, p. 973.]

**31-4816. Idaho emergency communications commission — Purposes and responsibilities.** — The purposes and responsibilities of the commission are to:

- (1) Determine the status and operability of consolidated emergency communications systems statewide;
- (2) Determine the needs for the upgrade of consolidated emergency communications systems;
- (3) Determine the costs for the upgrades;
- (4) Recommend guidelines and standards for operation of consolidated emergency communications systems;
- (5) Recommend funding mechanisms for future implementation of upgrades;
- (6) Serve as a conduit for the future allocation of federal grant funds to support the delivery of consolidated emergency communications systems;
- (7) Report annually to the legislature of the state of Idaho on the planned expenditures for the next fiscal year, the collected revenues and moneys disbursed from the fund and programs or projects in progress, completed or anticipated;
- (8) Enter into contracts with experts, agents, employees or consultants as may be necessary to carry out the purposes of this chapter; and
- (9) Promulgate rules pursuant to the provisions of chapter 52, title 67, Idaho Code, to carry out the purposes of the commission's duties. [I.C., § 31-4816, as added by 2004, ch. 325, § 2, p. 973.]

**31-4817. Idaho emergency communications commission — Mediation.** — In the event that a dispute arises between local government entities over the governance of operations of consolidated emergency communications systems, those local governments shall be required, prior to initiating any legal action, to submit the contested issue or issues to the commission for purposes of mediation. The commission shall have sixty (60) days from the date of submission of any issues to mediate and recommend a course of action to the local governments involved in the dispute. Any recommendation of the commission shall be advisory only and shall not be binding on the parties involved. After receipt of any recommendation by the commission, the local governments may accept in whole or in part the recommendations or may initiate legal action as provided by contract or law. [I.C., § 31-4817, as added by 2004, ch. 325, § 2, p. 973.]

**31-4818. Idaho emergency communications fund — Establishment and administration.** — (1) There is hereby created within the treasury of the state of Idaho a separate fund known as the Idaho emergency communications fund, which shall consist of moneys received from counties, cities, consolidated emergency communications operations, grants, donations, gifts and revenues from any other source to support the delivery of consolidated emergency communications systems.

(2) Moneys in the fund are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this chapter as determined by the commission.

(3) Annually, at the direction of the commission, not more than one percent (1%) of the total emergency communications fees collected in the state of Idaho is hereby dedicated for and shall be placed in the fund on a quarterly basis by county, city or consolidated emergency communications systems. The commission, on an annual basis, shall prepare a budget indicating that portion of the fee necessary for the continuous operation of the commission to achieve the purposes of this chapter.

(4) The commission shall authorize disbursement of moneys in the fund to eligible entities. [I.C., § 31-4818, as added by 2004, ch. 325, § 2, p. 973.]

## CHAPTER 49

### REGIONAL SOLID WASTE OR DOMESTIC SEPTAGE DISPOSAL DISTRICTS

#### SECTION.

- 31-4901. Findings and purpose.
- 31-4902. Definitions.
- 31-4903. Establishment of districts.
- 31-4904. District board — Quorum — Meetings.
- 31-4905. Conflict of interest prohibited.
- 31-4906. Powers of the board of directors.
- 31-4907. Annual budget.
- 31-4908. Apportionment of annual costs to counties.
- 31-4909. No power to tax.
- 31-4910. Bonds and other indebtedness.
- 31-4911. Authorization, form and sale of bonds.

#### SECTION.

- 31-4912. Security for bonds or other indebtedness.
- 31-4913. Limitation on actions.
- 31-4914. Application of laws.
- 31-4915. Competitive bid laws.
- 31-4916. Transfer of property authorized.
- 31-4917. Operation of landfills, domestic septage receiving stations or resource recovery facilities by participating counties prohibited.
- 31-4918. Liability of participating county.
- 31-4919. Inclusion of additional counties.
- 31-4920. Withdrawal of participating county.
- 31-4921. Dissolution.

**31-4901. Findings and purpose.** — (1) The legislature hereby finds and declares that the disposal of solid waste and domestic septage within the state of Idaho is an important public purpose, and that the creation of independent regional districts to administer solid waste or domestic septage disposal is an efficient and cost-effective method of meeting the state's solid waste or domestic septage disposal needs.

(2) The purpose of this chapter is to enable counties to establish regional solid waste or domestic septage districts for the purpose of providing a regional solution to the problem of solid waste or domestic septage disposal through the operation and maintenance of a regional solid waste or domestic septage system.

(3) The foregoing purpose is hereby declared to be a valid public purpose within the police powers of the state of Idaho. [I.C., § 31-4901, as added by 1990, ch. 390, § 1, p. 1085; am. 2001, ch. 175, § 2, p. 595.]

**31-4902. Definitions.** — As used in this chapter:

(1) "Act" or "this act" means this regional solid waste or domestic septage district act.

(2) "Commissioners" means the board of commissioners of each county within a district.

(3) "District" means a regional solid waste or domestic septage district created pursuant to this chapter.



(4) “District board” means the board of directors of a district.

(5) “Domestic septage” means either liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include liquid or solid material removed from septic tanks, cesspools, or similar treatment works that receive either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

(6) “Facility” or “facilities” means all equipment and other property, including electrical cogeneration equipment, deemed necessary by the district board for the operation of a solid waste disposal and/or resource recovery system or the operation of domestic septage receiving stations, domestic septage treatment processes and domestic septage disposal methods.

(7) “Participating county” means a county which elects, through action of the commissioners as provided in this chapter, to become a member of a district.

(8) “Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended.

(9) “State” means the state of Idaho.

(10) “System” means all components of solid waste operations including, but not limited to, landfill compliance measures, landfill disposal operations, regional transfer operations, domestic septage receiving stations, domestic septage disposal methods, domestic septage treatment operations and resource recovery and management, on any site or sites acquired, constructed, operated, or managed by a district. [I.C., § 31-4902, as added by 1990, ch. 390, § 1, p. 1085; am. 2001, ch. 175, § 3, p. 595.]

#### STATUTORY NOTES

**Compiler’s Notes.** — The words “this act” refer to S.L. 1990, ch. 390, which is compiled as §§ 31-4901 — 31-4921.

**31-4903. Establishment of districts.** — Any two (2) or more counties within the state may establish an independent public body corporate and politic to be known as a regional solid waste or domestic septage district (with such additional designation as the district board may select), consisting of such counties as may elect, by resolution of the commissioners of such counties, to become participating counties of such district. The boundaries of a district shall be coterminous with the boundaries of the participating

counties. Counties within a district need not be contiguous to each other. No district shall transact any business nor exercise any powers hereunder until or unless the commissioners of two (2) or more of such counties, by resolution, shall declare their intent to participate in a district. Any county which does not so elect to become a participating county shall not be subject to the provisions of this chapter.

In any suit, action, or proceeding involving or relating to any contract, resolution, regulation, or other action of a district, the district shall be conclusively deemed to have been organized and authorized to transact business and to exercise its powers hereunder upon proof of the adoption of a resolution by the commissioners of not less than two (2) counties as provided hereinabove. A duly certified copy of any such resolution shall be admissible in evidence in any suit, action, or proceeding.

A district created pursuant to this chapter shall not be deemed to be an agency of the state of Idaho nor of any of its political subdivisions for purposes of article VIII of the Idaho constitution. [I.C., § 31-4903, as added by 1990, ch. 390, § 1, p. 1085; am. 2001, ch. 175, § 4, p. 595.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

**31-4904. District board — Quorum — Meetings.** — A district shall be governed by a board of directors consisting of not less than three (3) members, hereinafter referred to as the district board, which shall be vested with the authority, control and supervision of the district. The district board shall consist of one (1) commissioner from each participating county, appointed by the commissioners of the participating county. If the district includes only two (2) counties, the commissioners of the two (2) participating counties shall jointly appoint a third member of the district board. *Ex officio*, nonvoting members may be appointed by the district board. The district board shall designate one (1) of its members as president, shall appoint a treasurer, who need not be a member of the district board, and shall establish such other officers as it deems necessary. The district board shall adopt bylaws for its own operation and establish such regular meeting dates and times as it shall deem necessary. A majority of the voting members of the district board shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action. A member of the district board shall serve for a two (2) year term and may be reappointed by the commissioners appointing such member. Any member may be removed by the commissioners who originally appointed such member, at any time and for any reason. Any vacancy shall be filled by the original appointing commissioners. Members of a district board shall serve without compensation, but may be reimbursed for their actual expenses incurred in attending board meetings or conducting other district business under such rules as the district board may adopt. Regular and special meetings of a district board shall be conducted in compliance with sections 67-2340 through 67-2347, Idaho Code. [I.C., § 31-4904, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4905. Conflict of interest prohibited.** — No member of a district board, employee, or agent of a district shall acquire any interest in any property or contract of the district. [I.C., § 31-4905, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4906. Powers of the board of directors.** — A district board shall have and may exercise the following powers and duties:

- (1) To sue and be sued;
- (2) To develop and administer a system for the regional disposal of solid waste, domestic septage and/or resource recovery within the district;
- (3) To authorize any action by motion, resolution, or other official action;
- (4) To administer and enforce all solid waste or domestic septage regulations and standards of the district;
- (5) To determine the location of its main office and branch offices, if any;
- (6) To acquire, hold title to, lease, mortgage or encumber, dispose of, and pledge real and personal property and to acquire, construct, or lease buildings, structures, and solid waste or domestic septage disposal and resource recovery sites and equipment as may be deemed necessary to fulfill its duties, and to have and exercise the power of eminent domain therefor;
- (7) To sell, convey, lease or dispose of any property, real or personal, with or without competitive bid, upon such terms and conditions and for such consideration as the district board deems appropriate;
- (8) To acquire, construct, operate, and maintain any facilities within the district, and to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining a system or facilities within the district;
- (9) To acquire, maintain, and operate, as an incident to solid waste disposal or domestic septage, electrical cogeneration facilities, to sell electricity to any person or entity, and to enter into contracts therefor;
- (10) To receive moneys and property from participating counties and to receive gifts, grants, and donations from any person or entity, to expend the same for the purposes of the district, to pledge the same for the payment of any indebtedness, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the district in investments permitted under sections 67-1210 and 67-1210A, Idaho Code;
- (11) To borrow money and incur indebtedness, and to evidence the same by notes, warrants, bonds, or other evidence of indebtedness;
- (12) To have the management, control, and supervision of all the business and affairs of the district;
- (13) To hire an administrator and provide for the compensation of other employees of the district, and to retain agents, engineers and consultants;
- (14) To retain or employ regular legal counsel, and to retain such special legal counsel as may be deemed necessary;



- (15) To fix and to increase or decrease rates, fees, tolls, or charges for the use or availability of the facilities of the district;
- (16) To adopt rules, regulations, and standards, consistent with state and federal laws and regulations, for the use of the district's system and facilities;
- (17) To maintain civil actions for the abatement of any violation of any of the district's rules, regulations, or standards;
- (18) To insure its property and to enter into contracts for insurance, including, but not limited to, liability insurance;
- (19) To exercise all or any part or combination of the powers set forth in this chapter, and to do all things necessary or incidental to the proper operation of this chapter. [I.C., § 31-4906, as added by 1990, ch. 390, § 1, p. 1085; am. 2001, ch. 175, § 5, p. 595.]

**31-4907. Annual budget.** — The fiscal year of a district shall commence on October 1 of each year and shall end on September 30 of the following year.

The district board shall prepare, by the first Monday in July of each year, a preliminary budget for the district and an estimate of costs to be apportioned to each participating county for the ensuing year. A copy of the preliminary budget, showing the amount of costs to be allocated to each participating county, shall be distributed to each participating county by July 15 of each year.

On or before the first Monday in August, there shall be held at a time and place determined by the district board a meeting and public hearing upon the proposed budget of the district. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in each participating county, in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required in section 31-1604, Idaho Code.

On or before August 15 of each year a budget for the district shall be approved by the district board and certified to each county. Such determination shall be binding upon all counties within the district and the district itself.

A district may establish operating funds, dedicated funds, bond and sinking funds, and such other funds as the district board may designate, and may accumulate and carry over funds from year to year as the district board shall direct. Such funds may be utilized for any lawful purpose of the district including, but not limited to, compliance with federal and state environmental protection laws and regulations. [I.C., § 31-4907, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4908. Apportionment of annual costs to counties.** — Any costs of the district for the ensuing year, in excess of the fees and other revenues anticipated to be received directly by the district, shall be allocated to the participating counties in accordance with the annual budget approved by

the district board. Costs shall be allocated on a per capita, weight, or volume basis, or any combination thereof designed to achieve an equitable distribution of costs in relation to the benefits derived to each county. Any participating county may finance its share of such costs in accordance with section 31-4404, Idaho Code. It shall be the duty of each participating county to remit its apportioned amount to the district at such time or times as specified in the annual budget approved by the district board. [I.C., § 31-4908, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4909. No power to tax.** — A district shall have no power to levy property taxes. Nothing herein shall be deemed as limiting or prohibiting the power of any participating county to levy property taxes for the purposes authorized in section 31-4404, Idaho Code. [I.C., § 31-4909, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4910. Bonds and other indebtedness.** — A district shall have power to issue bonds or other obligations including, without limitation, installment purchase or lease-purchase obligations, from time to time in the discretion of the district board, for any of its corporate purposes. A district shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued or other indebtedness previously incurred by it. In order to carry out the purposes of this chapter, a district may issue, upon proper resolution, bonds or other obligations on which the principal and interest are payable (a) exclusively from the income and revenue of a project financed with the proceeds of such bonds or other obligations; or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other moneys of the district or any source in aid of such project.

Neither the members of the district board nor any person executing the bonds shall be liable personally on the bonds or other obligations by reason of the issuance thereof. The bonds and other obligations of a district (and such bonds and obligations shall so state on their face) shall not be a debt or liability, direct or indirect, of the district, the state, or any political subdivision thereof, and neither the district, the state, nor any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of the district. Bonds of a district are declared to be issued for an essential public and governmental purpose, and the interest thereon shall be exempt from income taxation by the state of Idaho. [I.C., § 31-4910, as added by 1990, ch. 390 § 1, p. 1085.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

**31-4911. Authorization, form and sale of bonds.** — When the district board shall find the proposed project or projects to be necessary for the proper operation of the district and economically feasible and such

finding is recorded in its minutes, the bonds therefor shall be authorized by resolution of the district board. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding forty (40) years from the respective dates thereof, may mature in such amount or amounts, may bear interest at such rate or rates to be determined by the district board, may be in such form, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds may be sold at a public or private sale at, above, or below par, as shall be determined by the district board, plus accrued interest, in a manner to be provided by the district board. The bonds shall be fully negotiable within the meaning and for all purposes of the uniform commercial code. [I.C., § 31-4911, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4912. Security for bonds or other indebtedness.** — In connection with the issuance of bonds or the incurring of other indebtedness, and to secure the payment of the same, the district board shall have the power:

- (1) To pledge all or any part of its fees and revenues from any source;
- (2) To covenant against pledging all or any part of its fees and revenues, or against permitting any lien on such fees, revenues, or property;
- (3) To covenant as to the bonds or other indebtedness to be issued and as to the use and disposition of the proceeds thereof;
- (4) To establish and fund reserves for the payment of such bonds or indebtedness;
- (5) To enter into credit enhancement arrangements including, but not limited to, letters of credit, reimbursement and remarketing agreements, and bond insurance policies;
- (6) To make such covenants as will tend to make such bonds or indebtedness more marketable, notwithstanding that such covenants may not be enumerated herein. [I.C., § 31-4912, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4913. Limitation on actions.** — No direct or collateral action attacking or questioning the validity of any bonds or other indebtedness of a district shall be brought after the elapse of forty (40) days from and after the adoption of the resolution authorizing the issuance of such bonds or the incurring of such indebtedness. [I.C., § 31-4913, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4914. Application of laws.** — In the acquisition, construction, siting or other location of any facilities of a district, the district shall be subject to and shall comply with applicable zoning and building laws, ordinances and regulations of the governmental entity having jurisdiction over such location. [I.C., § 31-4914, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4915. Competitive bid laws.** — In the acquisition of public works or property, other than real property, a district shall comply with the



competitive bid requirements applicable to counties of the state. [I.C., § 31-4915, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4916. Transfer of property authorized.** — Any county, city, other political subdivision, public or quasi-public entity, and the state and any agency or department thereof, shall have the power to sell, convey or transfer with or without consideration, or to lease, for any term and upon any consideration, any property, real or personal, to a district. [I.C., § 31-4916, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4917. Operation of landfills, domestic septage receiving stations or resource recovery facilities by participating counties prohibited.** — No participating county shall acquire, construct or operate, or continue the operation of, any landfill site, domestic septage receiving stations, or any facility for the recovery of resources or the disposal of solid waste or domestic septage, without the consent of the district board, after a solid waste disposal, or domestic septage receiving station, or resource recovery facility of a district is operational. The foregoing restriction shall not apply to a resource recovery facility which was operational at, or which becomes operational within six (6) months after, the date of establishment of the district. The district board may establish exceptions, consistent with applicable federal and state laws and regulations, to this requirement. The commissioners of the participating counties shall take all actions necessary to require that all solid waste or domestic septage collected within their respective jurisdictions be delivered to the district's solid waste or domestic septage disposal or resource recovery site or sites. [I.C., § 31-4917, as added by 1990, ch. 390, § 1, p. 1085; am. 2001, ch. 175, § 6, p. 595.]

**31-4918. Liability of participating county.** — Each participating county shall be liable for the payment of its allocated costs pursuant to section 31-4908, Idaho Code. Each participating county shall be liable for environmental costs only to the extent provided in the comprehensive environmental response compensation and liability act of 1980, as the same now exists or may hereafter be amended, or to the extent provided in other applicable state or federal laws. [I.C., § 31-4918, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4919. Inclusion of additional counties.** — Any county which is not a participating county of a district may, with the consent of the district board and the consent of the commissioners of a majority of the participating counties, become a participating county of a district by adoption of a resolution in accordance with section 31-4903, Idaho Code. [I.C., § 31-4919, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4920. Withdrawal of participating county.** — A participating county may, with the consent of the commissioners of not less than two-thirds ( $\frac{2}{3}$ ) of the remaining participating counties, expressed by resolution, withdraw from a district. A county withdrawing from a district shall

not be entitled to reimbursement of any funds or to any proportionate share of the property of the district. [I.C., § 31-4920, as added by 1990, ch. 390, § 1, p. 1085.]

**31-4921. Dissolution.** — A district may be dissolved by the unanimous action, expressed by resolution of the commissioners, of the participating counties; provided, that no dissolution shall occur while any indebtedness of the district remains outstanding unless provision for the payment of all such indebtedness first be duly made. [I.C., § 31-4921, as added by 1990, ch. 390, § 1, p. 1085.]

## CHAPTER 50

### OPTIONAL FORMS OF COUNTY GOVERNMENT — GENERAL PROVISIONS

#### SECTION.

- 31-5001. Constitutional basis — Exclusive optional forms of county government.
- 31-5002. Short title — Application.
- 31-5003. Definitions.
- 31-5004. Petition or resolution to adopt an optional form of county government — Contents — Question to be submitted at general election.
- 31-5005. Election to adopt optional form of

#### SECTION.

- county government — Ballot question — More than one option on the ballot.
- 31-5006. General transition provisions.
- 31-5007. Change in status of elected officers.
- 31-5008. Treatment of existing ordinances and resolutions.
- 31-5009. Effect of adoption of an optional form of county government.
- 31-5010. Limitation on election to change the form of county government.

**31-5001. Constitutional basis — Exclusive optional forms of county government.** — (1) The purpose of this act is to establish optional forms of county government in compliance with section 12, article XVIII of the Idaho constitution. In addition to the original three (3) member board of county commissioners form of county government authorized by the constitution and laws of the state of Idaho before the enactment of section 12, article XVIII of the Idaho constitution, the following shall be the exclusive optional forms of county government:

- (a) The commission-executive, as authorized in chapter 52, title 31, Idaho Code;
- (b) The commission-manager, as authorized in chapter 53, title 31, Idaho Code;
- (c) The three-member board of county commissioners with changes in other county offices, as authorized in chapter 54, title 31, Idaho Code;
- (d) The five-member board of county commissioners, as authorized in chapter 55, title 31, Idaho Code;
- (e) The seven-member board of county commissioners, as authorized in chapter 56, title 31, Idaho Code;
- (f) Consolidation of offices among counties, with all other characteristics of the government of each participating county to remain unchanged, as authorized in chapter 57, title 31, Idaho Code.

(2) The adoption of an optional form of county government shall not relieve a county from the performance of the duties and responsibilities imposed upon the county, the board of county commissioners or any elected

officer of the county by the constitution and laws of the state of Idaho. [I.C., § 31-5001, as added by 1996, ch. 283, § 1, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words “this act” refer to S.L. 1996, ch. 283 which is compiled as §§ 31-5001 — 31-5703.

**31-5002. Short title — Application.** — (1) This act shall be known and may be cited as the “Optional Forms of County Government Act.”

(2) The provisions of chapters 50 and 51, title 31, Idaho Code, shall apply to chapters 52 through 57, title 31, Idaho Code. [I.C., § 31-5002, as added by 1996, ch. 283, § 1, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act” see Compiler's notes, § 31-5001.

**31-5003. Definitions.** — As used in chapters 50 through 57, title 31, Idaho Code:

(1) “Governing body” shall mean the board of county commissioners of the county or other legislative body governing the county under an optional form of county government approved by the electors of the county.

(2) “Officer” shall mean a member of the board of county commissioners, the clerk of the district court, ex officio auditor and recorder, the county treasurer, ex officio tax collector and public administrator, the county assessor, the county sheriff, the county coroner, the county prosecutor, or the holder of any other office of the county approved by the electors upon the adoption of an optional form of government.

(3) “Optional form of county government” shall mean any optional form of county government authorized by chapters 50 through 57, title 31, Idaho Code, or any subsequent act of the legislature.

(4) “Study commission” shall mean the body which may be appointed to review the government of the county and recommend which, if any, optional form of county government should be proposed to the electors. [I.C., § 31-5003, as added by 1996, ch. 283, § 1, p. 914.]

**31-5004. Petition or resolution to adopt an optional form of county government — Contents — Question to be submitted at general election.** — (1) The governing body of each county shall have the authority to submit to the electors of the county the question of the adoption of an optional form of county government as follows:

(a) The governing body may pass a resolution providing for the submission of the question;

(b) The governing body shall submit the question upon a petition signed by petitioners equal in number to fifteen percent (15%) of the qualified electors voting in the county in the last general election.

(2) A separate petition or resolution shall be required for each optional form of county government proposed.



(3) The petition or resolution to establish an optional form of county government shall contain:

(a) A complete description of the proposed optional form of government as required under the provisions of the chapter pertaining to the form of government proposed to be adopted and under any other provisions of this act;

(b) A description of the effect of adopting the option upon any incumbents;

(c) A statement that if an optional form is adopted the question to return to the previous form or any other optional form of county government may be placed at subsequent elections but not more frequently than every four

(4) years.

(4) The question of adopting an optional form of county government shall be submitted at the general election.

(5) The provisions of section 31-717, Idaho Code, shall govern the requirements for signatures, verification of valid petitions, printing and review of petitions, and time limits, unless expressly modified by other provisions of this act. The petition must be certified as provided in section 31-717, Idaho Code, prior to September 1 of the year of the general election at which the question of adopting the optional form of government proposed by the petition is to appear on the ballot. [I.C., § 31-5004, as added by 1996, ch. 283, § 1, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5001.

**31-5005. Election to adopt optional form of county government — Ballot question — More than one option on the ballot.** — (1) The question of adopting an optional form of county government shall be submitted to the electors in substantially the following form:

Vote for one:

In favor of retaining the (name current form of government) form of county government.

In favor of adopting the (name optional form) form of county government.

(2) If more than one (1) optional form of county government is to be presented to the electors the questions shall be submitted in substantially the following form:

Vote for one:

In favor of retaining the (name current form of government) form of county government.

In favor of adopting the (name optional form) form of county government.

Vote for one:

In favor of retaining the (name current form of government) form of county government.

In favor of adopting the (name optional form) of county government.

If a majority of the electors favor more than one (1) option appearing on the ballot, the option receiving the greatest number of votes shall be adopted. [I.C., § 31-5005, as added by 1996, ch. 283, § 1, p. 914.]

## STATUTORY NOTES

**Compiler's Notes.** — The words enclosed in parentheses so appeared in the law as enacted.

**31-5006. General transition provisions.** — (1) The governing body shall prepare a plan for the orderly transition to an optional form of county government approved by the electors of the county. The development of the plan shall initiate within thirty (30) days after the optional form is approved by the electors and shall be completed within six (6) months.

(2) The governing body may enact and enforce ordinances to bring about an orderly transition to the new form of government, including the transfer of powers, records, documents, properties, assets, funds, liabilities or personnel. These ordinances shall be consistent with the optional form approved and shall be necessary or convenient to place it into full effect. Whenever a question arises concerning transition for which there is no provision, the governing body may provide for the transition by ordinance, rule or resolution not inconsistent with law. [I.C., § 31-5006, as added by 1996, ch. 283, § 1, p. 914.]

**31-5007. Change in status of elected officers.** — Except as otherwise provided in this chapter or chapters 51 through 57, title 31, Idaho Code:

(1) An elected county officer whose office has become appointive or has been consolidated with another elective or appointive office under an optional form of government shall continue to perform the duties of office until his successor is appointed or elected and qualified. Thereafter the position held by the elected officer shall be deemed abolished.

(2) If the optional form of government consolidating an elective office with another office or making an elective office appointive is approved at an election at which\* the office was also filled by election, the office shall be declared abolished, the term of office not having commenced prior to the approval of the optional form.

(3) A petition or resolution proposing an optional form of county government may provide that an existing elected officer will continue in office until the end of the term for which he was elected or may provide that an existing elected officer will be retained as a county employee until the end of the term for which he was elected; provided that the person's salary shall not be reduced except as part of a general salary reduction.

(4) Nothing in this section precludes a former elected official from being appointed or elected to a position in county government. [I.C., § 31-5007, as added by 1996, ch. 283, § 1, p. 914.]

**31-5008. Treatment of existing ordinances and resolutions.** — All ordinances and resolutions in effect at the time the optional form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law. [I.C., § 31-5008, as added by 1996, ch. 283, § 1, p. 914.]

**31-5009. Effect of adoption of an optional form of county government.** — Adoption of an optional form of county government shall not affect

the validity of any bond, debt, contract, obligation or cause of action accrued or established under the prior form of government. [I.C., § 31-5009, as added by 1996, ch. 283, § 1, p. 914.]

**31-5010. Limitation on election to change the form of county government.** — In the event an optional form is adopted, the question whether to return to the original form or adopt any other optional form may be placed at subsequent elections, but not more frequently than each four (4) years. [I.C., § 31-5010, as added by 1996, ch. 283, § 1, p. 914.]

## STATUTORY NOTES

**Effective Dates.** — Section 11 of S.L. 1996, ch. 283 declared an emergency. Approved March 15, 1996.

## CHAPTER 51

### STUDY COMMISSION

#### SECTION.

- 31-5101. Appointment of study commission.
- 31-5102. Study commission — Qualifications.
- 31-5103. Study commission terms — Vacancies.
- 31-5104. Study commission — Organization

#### SECTION.

- Meetings — Conduct of business.
- 31-5105. Final report of study commission.
- 31-5106. Final report recommending optional form — Election.

**31-5101. Appointment of study commission.** — (1) The board of county commissioners may by resolution appoint a study commission, comprised of not less than five (5) nor more than nine (9) members, to study the existing form of county government, compare it to other optional forms and submit a report and any recommendations for change to the board.

(2) The board of county commissioners shall appoint a study commission upon the submission to it of a petition to appoint a study commission signed by petitioners equal in number to fifteen percent (15%) of the qualified electors voting in the county in the last general election.

(3) The resolution or petition shall state the number of commissioners to be appointed. [I.C., § 31-5101, as added by 1996, ch. 283, § 2, p. 914.]

**31-5102. Study commission — Qualifications.** — A member of a study commission shall be at least twenty-one (21) years of age and shall have resided in the county one (1) year preceding his appointment. Elected officials of the county then serving in office shall not be eligible. [I.C., § 31-5102, as added by 1996, ch. 283, § 2, p. 914.]

**31-5103. Study commission terms — Vacancies.** — (1) The term of office of a commission member initiates upon his appointment and concludes thirty (30) days after the issuance of the commission's final report.

(2) The governing body shall fill any vacancies occurring on the commission within thirty (30) days after the vacancy occurs.



(3) Members of the study commission shall serve without compensation, but may be reimbursed for expenses lawfully incurred in the performance of their duties. [I.C., § 31-5103, as added by 1996, ch. 283, § 2, p. 914.]

**31-5104. Study commission — Organization — Meetings — Conduct of business.** — (1) The commission shall meet within thirty (30) days of its appointment and shall organize by electing from its members a chairman, a vice-chairman, and a clerk-secretary.

(2) Meetings of the study commission shall be held upon the call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members. A majority of the members of the study commission constitutes a quorum for the transaction of business.

(3) All meetings, hearings and deliberations of the commission shall be subject to the provisions of sections 67-2340 through 67-2347, Idaho Code.

(4) The commission may prepare a proposed budget for its operation which shall be submitted to the governing body for approval.

(5) The commission may adopt rules governing its own organization and procedure.

(6) The commission shall keep written records of its proceedings and appropriate financial records. All such records shall be open for public inspection at the offices of the study commission during regular office hours.

(7) Subject to the approval of the governing body, the commission may employ and fix the compensation and duties of necessary research, clerical, legal and other staff.

(8) Upon the request of the chairman of the study commission, the officers and employees of state agencies, other counties and other units of local government shall furnish or make available to the commission such information as may be necessary for carrying out the commission's function.

(9) The commission may apply for and accept available private, state and federal funds and may accept donations from any source.

(10) A study commission may establish advisory boards and committees, including on them persons who are not members of the study commission.

(11) The governing body shall provide the commission with suitable space and access to county facilities for holding public hearings, may contribute clerical and other assistance to the commission, and shall provide the members and staff of the commission with information and assistance necessary to conduct a complete study of county government. [I.C., § 31-5104, as added by 1996, ch. 283, § 2, p. 914.]

**31-5105. Final report of study commission.** — (1) Within one (1) year after its first meeting, the study commission shall submit its final report to the governing body. The commission shall conduct one (1) or more public hearings before submitting the final report to the governing body. The study commission may recommend an optional form or may recommend no changes in county government. The report shall be signed by a majority of the commission members. If the study commission recommends an optional form of county government, the final report shall contain:

(a) A complete description of the optional form of county government proposed, as required under the provisions of the chapter pertaining to

the form of government proposed to be adopted and under any other provisions of this act; and

(b) A comparison of the existing form and proposed form of county government, including a statement of the strengths and weaknesses of the existing and proposed plans.

(2) Sufficient copies of the final report shall be prepared for public distribution and must be available not less than sixty (60) days prior to any election on adopting the recommended optional form.

(3) Within thirty (30) days after the commission submits the final report, the governing body shall publish a summary of the findings and recommendations contained in the final report in the official newspaper of the county once each week for two (2) successive weeks. The summary shall indicate where the full text of the final report may be reviewed or obtained. The summary shall include a comparison of the existing form of county government and the proposed optional form.

(4) The commission shall be deemed dissolved within thirty (30) days after it has submitted its final report to the governing body. [I.C., § 31-5105, as added by 1996, ch. 283, § 2, p. 914.]

### **31-5106. Final report recommending optional form — Election.**

— (1) If the commission is established by resolution of the governing body and the final report recommends that an optional form of county government be submitted to the electors, the governing body may submit the question at the next succeeding general election. The governing body shall determine whether the question will be submitted within thirty (30) days of receiving the final report and shall make a record of its decision, citing the reasons for any decision not to submit the question to the electors.

(2) If the commission is established by petition and the final report recommends that an optional form of county government be submitted to the electors, the governing body shall submit the question at the next succeeding general election. [I.C., § 31-5106, as added by 1996, ch. 283, § 2, p. 914.]

## **STATUTORY NOTES**

**Effective Dates.** — Section 11 of S.L. 1996, ch. 283 declared an emergency. Approved March 15, 1996.

## **CHAPTER 52**

### **COMMISSION-EXECUTIVE FORM OF COUNTY GOVERNMENT**

SECTION.	SECTION.	
31-5201. Commission-executive form.		Optional size — Districts to be redrawn.
31-5202. Election of executive.		
31-5203. Qualifications and office of executive.	31-5207. Election of additional commissioners — All members of commission may be elected to four year terms.	
31-5204. Powers of executive.		
31-5205. Veto power.		
31-5206. Board of county commissioners —	31-5208. Other offices.	

## SECTION.

31-5209. County clerk, ex officio auditor and recorder.

31-5210. County treasurer, ex officio tax collector and public administrator.

## SECTION.

31-5211. County assessor.

31-5212. County sheriff.

31-5213. County coroner.

31-5214. County prosecuting attorney.

**31-5201. Commission-executive form.** — The form of government provided in this chapter shall be known as the commission-executive. Each county operating under this form shall be governed by an elected board of county commissioners and an elected executive and the other officers specified in the resolution or petition from the choices provided in sections 31-5209 through 31-5214, Idaho Code. [I.C., § 31-5201, as added by 1996, ch. 283, § 3, p. 914.]

**31-5202. Election of executive.** — The executive shall be elected at the general election following the adoption of the commission-executive form of government provided in this chapter. [I.C., § 31-5202, as added by 1996, ch. 283, § 3, p. 914.]

**31-5203. Qualifications and office of executive.** — (1) No person shall be elected to the office of executive unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and has resided within the county one (1) year immediately preceding his election.

(2) Each candidate shall file his declaration of candidacy with the county clerk. Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor more than ten (10) qualified electors.

(3) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(4) The salary of the executive shall be set by the board of county commissioners and cannot be reduced except as a part of a general salary reduction.

(5) The office of the executive shall be deemed vacant as provided in section 59-901, Idaho Code. The vacancy shall be filled according to the provisions of section 59-906A, Idaho Code. [I.C., § 31-5203, as added by 1996, ch. 283, § 3, p. 914.]

**31-5204. Powers of executive.** — (1) The executive shall be the chief administrative official of the county and shall have all the powers and perform all the duties of an executive and administrative nature vested in, or imposed upon, the county or the board of county commissioners by law or by agreement with any municipality or other subdivision of the state. In addition to such other responsibilities as may be imposed upon him by law the county executive shall:

(a) Report annually to the board of county commissioners and the people on the state of the county. He shall also recommend to the board of county



commissioners whatever action or programs he deems necessary for the improvement of the county and the welfare of its residents;

(b) See that the ordinances of the county and the resolutions of the board of county commissioners are complied with and faithfully executed, execute all contracts and conveyances in the name of and on behalf of the county, and provide for the enforcement of all laws of the state subject to his enforcement or the enforcement of officers under his direction and supervision;

(c) Prepare and submit an annual budget for the county to the board of county commissioners. The executive shall be the county budget officer and shall be responsible for the performance of the duties of the county budget officer as provided in chapter 16, title 31, Idaho Code, and any other provisions of law imposing duties upon the county budget officer;

(d) Keep the board of county commissioners fully advised as to the financial condition and needs of the county and make such other reports from time to time as required by the board or as he deems necessary;

(e) Furnish the board of county commissioners with information concerning the operations of county departments, boards or commissions, necessary for the board to exercise its powers or as requested by the board;

(f) Preside over the meetings of the board of county commissioners and determine the order of business subject to any rules the board may prescribe, take part in the discussions, and recommend measures for adoption;

(g) Exercise the executive authority of the county to appoint, supervise, suspend and remove county personnel and make nominations and appointments to additional offices, advisory boards and committees.

(2) The executive may call special meetings of the board of county commissioners, the object of which shall be submitted to the board in writing.

(3) The executive may appoint an administrative assistant, qualified by education and experience, who shall be responsible for the orderly and efficient operation and coordination of the various departments, boards, and commissions of the county. [I.C., § 31-5204, as added by 1996, ch. 283, § 3, p. 914.]

**31-5205. Veto power.** — (1) The executive may sign or veto any ordinance or budget resolution adopted by the board of county commissioners. A veto by the executive may apply to all items or to any specific item of an ordinance or budget resolution appropriating money. Certification of a veto must be made by the executive within ten (10) days of the passage of the ordinance or budget resolution by the board of county commissioners. The board of county commissioners may override the veto by a two-thirds ( $\frac{2}{3}$ ) vote of all its members called to a special session to consider the veto by a majority of its members.

(2) If the executive fails or refuses to sign any ordinance or budget resolution and return it with his written objections to the board of county commissioners within ten (10) days of the passage of the ordinance or resolution, it shall become law without his signature. [I.C., § 31-5205, as added by 1996, ch. 283, § 3, p. 914.]

**31-5206. Board of county commissioners — Optional size — Districts to be redrawn.** — (1) The legislative authority of the county shall be vested in a board of county commissioners comprised of three (3), five (5) or seven (7) members. The petition or resolution shall specify the size of the board of county commissioners and shall indicate the term of office of the commission, as provided in section 31-5207, Idaho Code. In no event shall the term of office of any incumbent member of the board of county commissioners be affected as a result of an increase in the size of the board of county commissioners under the provisions of this chapter.

(2) If the size of the board of county commissioners is increased, at the regular meeting of the board in January, preceding any election of additional county commissioners, the board must divide the county into the number of districts equal to the number of commissioners approved by the electors. The districts established shall be as nearly equal in population as possible. The redrawing of an existing district which places the incumbent county commissioner for that district outside of its boundaries shall not disqualify or otherwise affect the qualifications of the commissioner during his incumbency. [I.C., § 31-5206, as added by 1996, ch. 283, § 3, p. 914.]

**31-5207. Election of additional commissioners — All members of commission may be elected to four year terms.** — (1) If the size of the board of county commissioners is increased, the additional commissioners shall be elected at the following general election.

(2) Except as provided in subsection (3) of this section, the additional members shall be elected for a term of two (2) years, with the allotment of the four (4) year term between the entire commission to proceed in numerical rotation in accordance with the provisions of section 31-703, Idaho Code.

(3) Notwithstanding the provisions of section 31-703, Idaho Code, or any other provision of law to the contrary, the petition or resolution to adopt the optional form of government provided in this chapter may provide that all members of the board of county commissioners for the county be elected to serve terms of four (4) years. If approved by the electors, the commissioner for each additional district shall be elected to a term of four (4) years and commissioners for existing districts shall be elected to a term of four (4) years upon the expiration of the commissioner's current term of office. [I.C., § 31-5207, as added by 1996, ch. 283, § 3, p. 914.]

**31-5208. Other offices.** — (1) The resolution or petition to adopt the commission-executive form of government shall further define the structure of the form by including one (1) selection from the choices specified for each of the offices listed in sections 31-5209 through 31-5214, Idaho Code.

(2) If the resolution or petition provides for the election of any new officers, such officers shall be elected at the general election following the adoption of the optional form of county government provided for in this chapter, or such earlier election date, subject to the provisions of section 34-106, Idaho Code, as provided in the petition or resolution. [I.C., § 31-5208, as added by 1996, ch. 283, § 3, p. 914.]

**31-5209. County clerk, ex officio auditor and recorder.** — For purposes of this act the duties and responsibilities of the county clerk shall be as provided in chapter 10, title 1, Idaho Code, and chapter 7, title 31, Idaho Code, or as otherwise prescribed by law; the duties of the county clerk as ex officio county auditor shall be as provided in chapter 23, title 31, Idaho Code, or as otherwise prescribed by law; and the duties of the county clerk as ex officio county recorder shall be as provided in chapter 24, title 31, Idaho Code, or as otherwise prescribed by law. A county clerk, ex officio auditor and recorder:

(1) Shall continue to be elected to a term of four (4) years and perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive and perform the duties and responsibilities of the county clerk, ex officio auditor and recorder; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name of each office and the duties and responsibilities assigned to each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the county clerk, ex officio auditor and recorder to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall specifically identify the duties of the office for which each other officer or appointee shall be responsible. The duties of the office as provided in chapter 10, title 1, Idaho Code, may not be combined with or assigned to the office of the sheriff or prosecuting attorney. [I.C., § 31-5209, as added by 1996, ch. 283, § 3, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1996, ch. 283 which is compiled as §§ 31-5001 — 31-5703.

**31-5210. County treasurer, ex officio tax collector and public administrator.** — For purposes of this act, the duties of the county treasurer as ex officio public administrator shall be as provided in chapter 1, title 14, Idaho Code; and the duties of the county treasurer as county treasurer and ex officio tax collector shall be as provided in chapters 15 and 21, title 31, Idaho Code, and title 63, Idaho Code, and as otherwise prescribed by law. A county treasurer, ex officio tax collector and public administrator:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or



(2) Shall be elected to a different term of office to be specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive and perform all the duties of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name of each office and the duties and responsibilities assigned to each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall specifically identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5210, as added by 1996, ch. 283, § 3, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act”  
see Compiler's notes, § 31-5209.

**31-5211. County assessor.** — For purposes of this act, the duties of the county assessor shall be as provided in title 63, Idaho Code, and as otherwise prescribed by law. A county assessor:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive and perform all the duties of the office; or

(4) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall specifically identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5211, as added by 1996, ch. 283, § 3, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act”  
see Compiler's notes, § 31-5209.

**31-5212. County sheriff.** — For purposes of this act, the duties of the county sheriff shall be as provided in chapter 22, title 31, Idaho Code, and as otherwise prescribed by law. A county sheriff:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive and perform all the duties of the office; or

(4) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The office of sheriff may not be consolidated with the office of the prosecuting attorney or the office of the clerk of the district court. The resolution or petition shall specifically identify those duties of the county sheriff for which each other officer or appointee shall be responsible. [I.C., § 31-5212, as added by 1996, ch. 283, § 3, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5209.

**31-5213. County coroner.** — For purposes of this act the duties of the county coroner shall be as provided in chapter 28, title 31, Idaho Code, and as otherwise prescribed by law. A county coroner:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive and perform all the duties of the office; or

(4) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall specifically identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5213, as added by 1996, ch. 283, § 3, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5209.

**31-5214. County prosecuting attorney.** — For purposes of this act, the duties of the county prosecuting attorney shall be as provided in chapter 26, title 31, Idaho Code, and as otherwise prescribed by law. A county prosecuting attorney:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the executive with the advice and consent of the board of county commissioners, be supervised by the executive, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons, or by a qualified person retained by the county on a contractual basis, as provided in the resolution or petition. The office of prosecuting attorney may not be consolidated with the office of sheriff or the office of clerk of the district court. The resolution or petition shall specifically identify those duties of the office for which each other officer, appointee, or party to the contract shall be responsible. [I.C., § 31-5214, as added by 1996, ch. 283, § 3, p. 914.]

STATUTORY NOTES

**Compiler's Notes.** — For words “this act” 1996, ch. 283 declared an emergency. Ap-see Compiler's notes, § 31-5209. proved March 15, 1996.

**Effective Dates.** — Section 11 of S.L.

CHAPTER 53

COMMISSION-MANAGER

SECTION.

- 31-5301. Commission-manager form of government.
- 31-5302. Manager — Qualifications — Appointment.
- 31-5303. Powers and duties.
- 31-5304. Board of county commissioners — Optional size — Districts to be redrawn.
- 31-5305. Election of additional commissioners — All members of commission may be elected to four year terms.

SECTION.

- 31-5306. Other offices.
- 31-5307. County clerk, ex officio auditor and recorder.
- 31-5308. County treasurer, ex officio tax collector and public administrator.
- 31-5309. County assessor.
- 31-5310. County sheriff.
- 31-5311. County coroner.
- 31-5312. County prosecuting attorney.

**31-5301. Commission-manager form of government.** — The form of government provided in this chapter shall be known as the commission-manager. Each county operating under this form shall be governed by an elected board of county commissioners and a manager appointed by the board of county commissioners and the other officers specified in the resolution or petition from the choices provided in sections 31-5307 through 31-5312, Idaho Code. [I.C., § 31-5301, as added by 1996, ch. 283, § 4, p. 914.]

**31-5302. Manager — Qualifications — Appointment.** — (1) The manager shall be the administrative head of the county and shall be appointed by the board of county commissioners on the basis of training,



experience and administrative qualifications. The manager shall serve at the pleasure of the board and may be removed by the board at any time.

(2) The manager shall be appointed by the board as soon as practicable, but not later than six (6) months after the adoption of the commission-manager form of government.

(3) The board may appoint any county elected official to serve as the manager. [I.C., § 31-5302, as added by 1996, ch. 283, § 4, p. 914.]

**31-5303. Powers and duties.** — The manager shall:

(1) Have general supervision of the administrative functions of the county;

(2) See that the ordinances, resolutions and contracts of the board of county commissioners are complied with and faithfully executed;

(3) Furnish the board with information concerning the operations of county departments, boards or commissions, as necessary for the board to exercise its powers or as requested by the board and submit any other reports requested by the board or as he deems necessary;

(4) Prepare and submit an annual budget for the county to the board of county commissioners. The manager shall be the county budget officer and shall be responsible for the performance of the duties of the county budget officer as provided in chapter 16, title 31, Idaho Code, and any other provisions of law imposing duties upon the county budget officer.

(5) Keep the board fully advised of the financial condition and needs of the county;

(6) Attend meetings of the board of county commissioners, take part in the discussions, but not vote, and recommend measures for adoption;

(7) Exercise the executive authority of the county to appoint, supervise, suspend and remove county personnel and make nominations and appointments to advisory boards and committees;

(8) Perform such other duties as the board may establish by ordinance or resolution. [I.C., § 31-5303, as added by 1996, ch. 283, § 4, p. 914.]

**31-5304. Board of county commissioners — Optional size — Districts to be redrawn.** — (1) The legislative authority of the county shall be vested in a board of county commissioners comprised of three (3), five (5) or seven (7) members. The petition or resolution shall specify the size of the board of county commissioners and shall indicate the term of office of the commission, as provided in section 31-5305, Idaho Code. In no event shall the term of office of any incumbent member of the board of county commissioners be affected as a result of an increase in the size of the board of county commissioners under the provisions of this chapter.

(2) If the size of the board of county commissioners is increased, at the regular meeting of the board in January, preceding any election of additional county commissioners, the board must divide the county into the number of districts equal to the number of commissioners approved by the electors. The districts established shall be as nearly equal in population as possible. The redrawing of an existing district which places the incumbent county commissioner for that district outside of its boundaries shall not disqualify

or otherwise affect the qualifications of the commissioner during his incumbency. [I.C., § 31-5304, as added by 1996, ch. 283, § 4, p. 914.]

**31-5305. Election of additional commissioners — All members of commission may be elected to four year terms.** — (1) If the size of the board of county commissioners is increased, the additional commissioners shall be elected at the following general election.

(2) Except as provided in subsection (3) of this section, the additional members shall be elected for a term of two (2) years, with the allotment of the four-year term between the entire commission to proceed in numerical rotation in accordance with the provisions of section 31-703, Idaho Code.

(3) Notwithstanding the provisions of section 31-703, Idaho Code, or any other provision of law to the contrary, the petition or resolution to adopt the optional form of government provided in this chapter may provide that all members of the board of county commissioners for the county be elected to serve terms of four (4) years. If approved by the electors, the commissioner for each additional district shall be elected to a term of four (4) years and commissioners for existing districts shall be elected to a term of four (4) years upon the expiration of the commissioner's current term of office. [I.C., § 31-5305, as added by 1996, ch. 283, § 4, p. 914.]

**31-5306. Other offices.** — (1) The resolution or petition to adopt the commission manager form of government shall further define the structure of the form by including one (1) selection from the choices specified for each of the offices listed in sections 31-5307 through 31-5212, Idaho Code.

(2) If the resolution or petition provides for the election of any new officers, such officers shall be elected at the general election following the adoption of the optional form of county government provided for in this chapter. [I.C., § 31-5306, as added by 1996, ch. 283, § 4, p. 914; am. 1996, ch. 326, § 1, p. 1111.]

#### STATUTORY NOTES

**Effective Dates.** — Section 3 of S.L. 1996, ch. 326 read: "This act shall be effective upon the passage and approval of House Bill 448 [S.L. 1996, ch. 283] in the Second Regular Session of the Fifty-third Idaho Legislature [March 15, 1996]."

**31-5307. County clerk, ex officio auditor and recorder.** — For purposes of this act the duties and responsibilities of the county clerk shall be as provided in chapter 10, title 1, Idaho Code, and chapter 7, title 31, Idaho Code, or as otherwise prescribed by law; the duties of the county clerk as ex officio county auditor shall be as provided in chapter 23, title 31, Idaho Code, or as otherwise prescribed by law; and the duties of the county clerk as ex officio county recorder shall be as provided in chapter 24, title 31, Idaho Code, or as otherwise prescribed by law. A county clerk, ex officio auditor and recorder:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office specified in the petition or resolution, but not to exceed four (4) years, and perform the duties and responsibilities of the county clerk, auditor and recorder; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager and perform the duties and responsibilities of the county clerk, ex officio auditor and recorder; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall identify the duties of the office for which each other officer or appointee shall be responsible. The duties of the office as provided in chapter 10, title 1, Idaho Code, may not be combined with or assigned to the office of the sheriff or prosecuting attorney. [I.C., § 31-5307, as added by 1996, ch. 283, § 4, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1996, ch. 283, which is compiled as §§ 31-5001 — 31-5703.

**31-5308. County treasurer, ex officio tax collector and public administrator.** — For purposes of this act, the duties of the county treasurer as ex officio public administrator shall be as provided in chapter 1, title 14, Idaho Code; and the duties of the county treasurer as county treasurer and ex officio tax collector shall be as provided in chapters 15 and 21, title 31, Idaho Code, and title 63, Idaho Code, and as otherwise prescribed by law. A county treasurer, ex officio tax collector and public administrator:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office to be specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager and perform all the duties of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The



petition or resolution shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5308, as added by 1996, ch. 283, § 4, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act” see Compiler's notes § 31-5007.

**31-5309. County assessor.** — For purposes of this act, the duties of the county assessor shall be as provided in title 63, Idaho Code, and as otherwise prescribed by law. A county assessor:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5309, as added by 1996, ch. 283, § 4, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.\*** — For words “this act” see Compiler's notes, § 31-5007.

**31-5310. County sheriff.** — For purposes of this act, the duties of the county sheriff shall be as provided in chapter 22, title 31, Idaho Code, and as otherwise prescribed by law. A county sheriff:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The office of sheriff may not be consolidated with the office of the prosecuting attorney or the office of the clerk of the district court. The resolution or petition shall identify those duties of the county sheriff for which each other officer or

appointee shall be responsible. [I.C., § 31-5310, as added by 1996, ch. 283, § 4, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5307.

**31-5311. County coroner.** — For purposes of this act the duties of the county coroner shall be as provided in chapter 28, title 31, Idaho Code, and as otherwise prescribed by law. A county coroner:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5311, as added by 1996, ch. 283, § 4, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5307.

**31-5312. County prosecuting attorney.** — For purposes of this act, the duties of the county prosecuting attorney shall be as provided in chapter 26, title 31, Idaho Code, and as otherwise prescribed by law. A county prosecuting attorney:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the manager with the advice and consent of the board of county commissioners, be supervised by the manager, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers, appointed persons, or persons retained by the county on a contractual basis, as provided in the resolution or petition. The office of prosecuting attorney may not be consolidated with the office of sheriff or the office of clerk of the district court. The resolution or petition shall identify those duties of the

office for which each other officer, appointee or party to the contract shall be responsible. [I.C., § 31-5312, as added by 1996, ch. 283, § 4, p. 914.]

### STATUTORY NOTES

**Compiler's Notes.** — For words “this act” see Compiler's notes, § 31-5307. 1996, ch. 283 declared an emergency. Approved March 15, 1996.

**Effective Dates.** — Section 11 of S.L.

## CHAPTER 54

### THREE-MEMBER BOARD OF COUNTY COMMISSIONERS WITH CHANGES IN OTHER COUNTY OFFICES

#### SECTION.

- 31-5401. Three-member board of county commissioners with changes in other offices.
- 31-5402. Board of county commissioners — Authority — Change in term of office.
- 31-5403. Other offices.
- 31-5404. County clerk, ex officio auditor and recorder.

#### SECTION.

- 31-5405. County treasurer, ex officio tax collector and public administrator.
- 31-5406. County assessor.
- 31-5407. County sheriff.
- 31-5408. County coroner.
- 31-5409. County prosecuting attorney.

**31-5401. Three-member board of county commissioners with changes in other offices.** — The form of government provided in this chapter shall consist of an elected board of county commissioners comprised of three (3) members and the other officers specified in the resolution or petition from the choices provided in sections 31-5404 through 31-5409, Idaho Code. [I.C., § 31-5401, as added by 1996, ch. 283, § 5, p. 914.]

**31-5402. Board of county commissioners — Authority — Change in term of office.** — (1) The board of county commissioners shall be vested with all executive and legislative authority of the county.

(2) Notwithstanding the provisions of section 31-703, Idaho Code, or any other provision of law to the contrary, the petition or resolution to adopt the optional form of government provided in this chapter may specify that all members of the board of county commissioners be elected to serve terms of four (4) years. If approved by the electors, the commissioner for each district shall be elected to a term of four (4) years upon the expiration of the commissioner's current term of office.

(3) The resolution or petition shall specify whether the provisions of section 31-703, Idaho Code, shall continue to govern the terms of office of the members of the commission or whether the terms of office of the members of the commission shall be changed as provided in subsection (2) of this section. [I.C., § 31-5402, as added by 1996, ch. 283, § 5, p. 914.]

**31-5403. Other offices.** — (1) The resolution or petition to adopt the form of government provided in this chapter shall further define the structure of the form by including one (1) selection from the choices specified for the offices listed in sections 31-5404 through 31-5409, Idaho Code.



(2) If the resolution or petition provides for the election of any new officers, such officers shall be elected at the general election following the adoption of the optional form of county government provided for in this chapter. [I.C., § 31-5403, as added by 1996, ch. 283, § 5, p. 914.]

**31-5404. County clerk, ex officio auditor and recorder.** — For purposes of this act the duties and responsibilities of the county clerk shall be as provided in chapter 10, title 1, Idaho Code, and chapter 7, title 31, Idaho Code, or as otherwise prescribed by law; the duties of the county clerk as ex officio county auditor shall be as provided in chapter 23, title 31, Idaho Code, or as otherwise prescribed by law; and the duties of the county clerk as ex officio county recorder shall be as provided in chapter 24, title 31, Idaho Code, or as otherwise prescribed by law. A county clerk, ex officio auditor and recorder:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office specified in the petition or resolution, but not to exceed four (4) years, and perform the duties and responsibilities of the county clerk, ex officio auditor and recorder; or

(3) Shall be appointed by the board of county commissioners and shall perform the duties and responsibilities of the county clerk, ex officio auditor and recorder; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall identify the duties of the office for which each other officer or appointee shall be responsible. The duties of the office as clerk of the district court, as provided in chapter 10, title 1, Idaho Code, may not be consolidated with the office of the sheriff or prosecuting attorney. [I.C., § 31-5404, as added by 1996, ch. 283, § 5, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1996, ch. 283 which is compiled as §§ 31-5001 — 31-5703.

**31-5405. County treasurer, ex officio tax collector and public administrator.** — For purposes of this act, the duties of the county treasurer as ex officio public administrator shall be as provided in chapter 1, title 14, Idaho Code; and the duties of the county treasurer as county treasurer and ex officio tax collector shall be as provided in chapters 15 and 21, title 31, Idaho Code, and title 63, Idaho Code, and as otherwise prescribed by law. A county treasurer, ex officio tax collector and public administrator:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office to be specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the board of county commissioners and perform all the duties of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5405, as added by 1996, ch. 283, § 5, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act”  
see Compiler's notes, § 31-5404.

**31-5406. County assessor.** — For purposes of this act, the duties of the county assessor shall be as provided in title 63, Idaho Code, and as otherwise prescribed by law. A county assessor:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5406, as added by 1996, ch. 283, § 5, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words “this act”  
see Compiler's notes, § 31-5404.

**31-5407. County sheriff.** — For purposes of this act, the duties of the county sheriff shall be as provided in chapter 22, title 31, Idaho Code, and as otherwise prescribed by law. A county sheriff:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The office of sheriff may not be consolidated with the office of the prosecuting attorney or the office of the clerk of the district court. The resolution or petition shall identify those duties of the county sheriff for which each other officer or appointee shall be responsible. [I.C., § 31-5407, as added by 1996, ch. 283, § 5, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5404.

**31-5408. County coroner.** — For purposes of this act the duties of the county coroner shall be as provided in chapter 28, title 31, Idaho Code, and as otherwise prescribed by law. A county coroner:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5408, as added by 1996, ch. 283, § 5, p. 914.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5404.

**31-5409. County prosecuting attorney.** — For purposes of this act, the duties of the county prosecuting attorney shall be as provided in chapter 26, title 31, Idaho Code, and as otherwise prescribed by law. A county prosecuting attorney:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or



(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers, appointed persons, or persons retained on a contractual basis as provided in the resolution or petition. The office of prosecuting attorney may not be consolidated with the office of sheriff or the office of clerk of the district court. The resolution or petition shall identify those duties of the office for which each other officer, appointee or party to the contract shall be responsible. [I.C., § 31-5409, as added by 1996, ch. 283, § 5, p. 914.]

STATUTORY NOTES

**Compiler's Notes.** — For words “this act” 1996, ch. 283 declared an emergency. Approved March 15, 1996.  
**Effective Dates.** — Section 11 of S.L. approved March 15, 1996.

CHAPTER 55

FIVE-MEMBER BOARD OF COUNTY COMMISSIONERS

SECTION.	SECTION.
31-5501. Five-member board of county commissioners.	31-5505. Other offices.
31-5502. Board of county commissioners — Change in term of office.	31-5506. County clerk, ex officio auditor and recorder.
31-5503. Five-member board — Districts to be redrawn — Election of additional commissioners.	31-5507. County treasurer, ex officio tax collector and public administrator.
31-5504. Board of county commissioners — Legislative and executive authority — Optional executive board.	31-5508. County assessor.
	31-5509. County sheriff.
	31-5510. County coroner.
	31-5511. County prosecuting attorney.

**31-5501. Five-member board of county commissioners.** — The form of government provided in this chapter shall consist of an elected board of county commissioners comprised of five (5) members and the other officers specified in the resolution or petition from the choices provided in sections 31-5506 through 31-5511, Idaho Code. [I.C., § 31-5501, as added by 1996, ch. 283, § 6, p. 914.]

**31-5502. Board of county commissioners — Change in term of office.** — (1) The petition or resolution shall specify the terms of office of the five-member board of county commissioners, which may be as provided in this section.

(2) Except as provided in subsection (3) of this section, the additional members of the board of county commissioners shall be elected for a term of two (2) years, with the allotment of the four-year term between the entire commission to proceed in numerical rotation in accordance with the provisions of section 31-703, Idaho Code.

(3) Notwithstanding the provisions of section 31-703, Idaho Code, or any other provision of law to the contrary, the petition or resolution to adopt the optional form of government provided in this chapter may provide that all members of the board of county commissioners for the county be elected to serve terms of four (4) years. If approved by the electors, the commissioner for each additional district shall be elected to a term of four (4) years and commissioners for existing districts shall be elected to a term of four (4) years upon the expiration of the commissioner's current term of office. [I.C., § 31-5502, as added by 1996, ch. 283, § 6, p. 914.]

**31-5503. Five-member board — Districts to be redrawn — Election of additional commissioners.** — (1) Upon the adoption of the form of government provided in this chapter, at the regular meeting of the board in January, preceding any election of additional county commissioners, the board must divide the county into the number of districts equal to the number of commissioners approved by the electors. The districts established shall be as nearly equal in population as possible. The redrawing of an existing district which places the incumbent county commissioner for that district outside of its boundaries shall not disqualify or otherwise affect the qualifications of the commissioner during his incumbency.

(2) The two (2) additional commissioners shall be elected at the general election following the adoption of the form of government provided in this chapter.

(3) In no event shall the term of office of any incumbent member of the board of county commissioners be affected by the adoption of the form of government provided in this chapter. [I.C., § 31-5503, as added by 1996, ch. 283, § 6, p. 914.]

**31-5504. Board of county commissioners — Legislative and executive authority — Optional executive board.** — (1) Upon the adoption of the form of county government provided in this chapter, the legislative authority of the county and, except as provided in subsection (2) of this section, the executive authority of the county shall be vested in the five (5) member board of county commissioners.

(2) The executive authority of the county may be vested in an executive board comprised of three (3) members of the board of county commissioners chosen by the board as a whole, in a manner to be determined by the board. If the board of county commissioners determines to vest the executive authority of the county in an executive board, the board shall identify the manner in which the executive board shall be chosen and shall choose the executive board within thirty (30) days of the adoption of the form of government provided in this chapter. [I.C., § 31-5504, as added by 1996, ch. 283, § 6, p. 914.]

**31-5505. Other offices.** — (1) The resolution or petition to adopt the form of government provided in this chapter shall further define the structure of the form by including one (1) selection from the choices specified

for each of the offices listed in sections 31-5506 through 31-5511, Idaho Code.

(2) If the resolution or petition provides for the election of any new officers, such officers shall be elected at the general election following the adoption of the optional form of county government provided for in this chapter. [I.C., § 31-5505, as added by 1996, ch. 283, § 6, p. 914.]

**31-5506. County clerk, ex officio auditor and recorder.** — For purposes of this act the duties and responsibilities of the county clerk shall be as provided in chapter 10, title 1, Idaho Code, and chapter 7, title 31, Idaho Code, or as otherwise prescribed by law; the duties of the county clerk as ex officio county auditor shall be as provided in chapter 23, title 31, Idaho Code, or as otherwise prescribed by law; and the duties of the county clerk as ex officio county recorder shall be as provided in chapter 24, title 31, Idaho Code, or as otherwise prescribed by law. A county clerk, ex officio auditor and recorder:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties and responsibilities of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall identify the duties of the office for which each other officer or appointee shall be responsible. The duties of the office as provided in chapter 10, title 1, Idaho Code, may not be consolidated with the office of the sheriff or prosecuting attorney. [I.C., § 31-5506, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1996, ch. 283 which is compiled as §§ 31-5001 — 31-5703.

**31-5507. County treasurer, ex officio tax collector and public administrator.** — For purposes of this act, the duties of the county treasurer as ex officio public administrator shall be as provided in chapter 1, title 14, Idaho Code; and the duties of the county treasurer as county treasurer and ex officio tax collector shall be as provided in chapters 15 and



21, title 31, Idaho Code, and title 63, Idaho Code, and as otherwise prescribed by law. A county treasurer, ex officio tax collector and public administrator:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office to be specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall specifically identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5507, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5506.

**31-5508. County assessor.** — For purposes of this act, the duties of the county assessor shall be as provided in title 63, Idaho Code, and as otherwise prescribed by law. A county assessor:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5508, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5506.

**31-5509. County sheriff.** — For purposes of this act, the duties of the county sheriff shall be as provided in chapter 22, title 31, Idaho Code, and as otherwise prescribed by law. A county sheriff:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The office of sheriff may not be consolidated with the office of the prosecuting attorney or the office of the clerk of the district court. The resolution or petition shall identify those duties of the county sheriff for which each other officer or appointee shall be responsible. [I.C., § 31-5509, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, §\* 31-5506.

**31-5510. County coroner.** — For purposes of this act the duties of the county coroner shall be as provided in chapter 28, title 31, Idaho Code, and as otherwise prescribed by law. A county coroner:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5510, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5506.

**31-5511. County prosecuting attorney.** — For purposes of this act, the duties of the county prosecuting attorney shall be as provided in chapter 26, title 31, Idaho Code, and as otherwise prescribed by law. A county prosecuting attorney:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers, appointed persons or persons retained on a contractual basis as provided in the resolution or petition. The office of prosecuting attorney may not be consolidated with the office of sheriff or the office of clerk of the district court. The resolution or petition shall identify those duties of the office for which each other officer, appointee or party to the contract shall be responsible. [I.C., § 31-5511, as added by 1996, ch. 283, § 6, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

## STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5506.

**Effective Dates.** — Section 11 of S.L. 1996, ch. 283 declared an emergency. Approved March 13, 1996.

Section 3 of S.L. 1996, ch. 326 read: "This act shall be effective upon the passage and approval of House Bill 448 [S.L. 1996, ch. 283] in the Second Regular Session of the Fifty-third Idaho Legislature [March 15, 1996]."

## CHAPTER 56

## SEVEN-MEMBER BOARD OF COUNTY COMMISSIONERS

## SECTION.

- 31-5601. Seven-member board of county commissioners.
- 31-5602. Board of county commissioners — Change in term of office.
- 31-5603. Seven-member board — Districts to be redrawn — Election of additional commissioners.
- 31-5604. Board of county commissioners — Legislative and executive authority — Optional executive board.

## SECTION.

- 31-5605. Other offices.
- 31-5606. County clerk, ex officio auditor and recorder.
- 31-5607. County treasurer, ex officio tax collector and public administrator.
- 31-5608. County assessor.
- 31-5609. County sheriff.
- 31-5610. County coroner.
- 31-5611. County prosecuting attorney.



**31-5601. Seven-member board of county commissioners.** — The form of government provided in this chapter shall consist of an elected board of county commissioners comprised of seven (7) members and the other officers specified in the resolution or petition from the choices provided in sections 31-5606 through 31-5611, Idaho Code. [I.C., § 31-5601, as added by 1996, ch. 283, § 7, p. 914.]

**31-5602. Board of county commissioners — Change in term of office.** — (1) The petition or resolution shall specify the terms of office of the seven-member board of county commissioners, which may be as provided in this section.

(2) Except as provided in subsection (3) of this section, the additional members of the board of county commissioners shall be elected for a term of two (2) years, with the allotment of the four-year term between the entire commission to proceed in numerical rotation in accordance with the provisions of section 31-703, Idaho Code.

(3) Notwithstanding the provisions of section 31-703, Idaho Code, or any other provision of law to the contrary, the petition or resolution to adopt the optional form of government provided in this chapter may provide that all members of the board of county commissioners for the county be elected to serve terms of four (4) years. If approved by the electors, the commissioner for each additional district shall be elected to a term of four (4) years and commissioners for existing districts shall be elected to a term of four (4) years upon the expiration of the commissioner's current term of office. [I.C., § 31-5602, as added by 1996, ch. 283, § 7, p. 914.]

**31-5603. Seven-member board — Districts to be redrawn — Election of additional commissioners.** — (1) Upon the adoption of the form of government provided in this chapter, at the regular meeting of the board in January, preceding any election of additional county commissioners, the board must divide the county into the number of districts equal to the number of commissioners approved by the electors. The districts established shall be as nearly equal in population as possible. The redrawing of an existing district which places the incumbent county commissioner for that district outside of its boundaries shall not disqualify or otherwise affect the qualifications of the commissioner during his incumbency.

(2) The four (4) additional commissioners shall be elected at the general election following the adoption of the form of government provided in this chapter.

(3) In no event shall the term of office of any incumbent member of the board of county commissioners be affected by the adoption of the form of government provided in this chapter. [I.C., § 31-5603, as added by 1996, ch. 283, § 7, p. 914.]

**31-5604. Board of county commissioners — Legislative and executive authority — Optional executive board.** — (1) Upon the adoption of the form of county government provided in this chapter, the legislative authority of the county and, except as provided in subsection (2) of this

section, the executive authority of the county shall be vested in the seven (7) member board of county commissioners.

(2) The executive authority of the county may be vested in an executive board comprised of three (3) members of the board of county commissioners chosen by the board as a whole, in a manner to be determined by the board. If the board of county commissioners determines to vest the executive authority of the county in an executive board, the board shall identify the manner in which the executive board shall be chosen and shall choose the executive board within thirty (30) days of the adoption of the form of government provided in this chapter. [I.C., § 31-5604, as added by 1996, ch. 283, § 7, p. 914.]

**31-5605. Other offices.** — (1) The resolution or petition to adopt the form of government provided in this chapter shall further define the structure of the form by including one (1) selection from the choices specified for each of the offices listed in sections 31-5606 through 31-5611, Idaho Code.

(2) If the resolution or petition provides for the election of any new officers, such officers shall be elected at the general election following the adoption of the optional form of county government provided for in this chapter. [I.C., § 31-5605, as added by 1996, ch. 283, § 7, p. 914.]

**31-5606. County clerk, ex officio auditor and recorder.** — For purposes of this act the duties and responsibilities of the county clerk shall be as provided in chapter 10, title 1, Idaho Code, and chapter 7, title 31, Idaho Code, or as otherwise prescribed by law; the duties of the county clerk as ex officio county auditor shall be as provided in chapter 23, title 31, Idaho Code, or as otherwise prescribed by law; and the duties of the county clerk as ex officio county recorder shall be as provided in chapter 24, title 31, Idaho Code, or as otherwise prescribed by law. A county clerk, ex officio auditor and recorder:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties and responsibilities of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall identify the duties of the office for which each

other officer or appointee shall be responsible. The duties of the office as provided in chapter 10, title 1, Idaho Code, may not be consolidated with the office of the sheriff or prosecuting attorney. [I.C., § 31-5606, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1996, ch. 283 which is compiled as §§ 31-5001 — 31-5703.

**31-5607. County treasurer, ex officio tax collector and public administrator.** — For purposes of this act, the duties of the county treasurer as ex officio public administrator shall be as provided in chapter 1, title 14, Idaho Code; and the duties of the county treasurer as county treasurer and ex officio tax collector shall be as provided in chapters 15 and 21, title 31, Idaho Code, and title 63, Idaho Code, and as otherwise prescribed by law. A county treasurer, ex officio tax collector and public administrator:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office to be specified in the petition or resolution, but not to exceed four (4) years, and perform all the duties and responsibilities of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be divided into two (2) or three (3) separate offices, with the persons to fill those offices to be elected or appointed in the manner provided in subsection (1), (2) or (3) of this section. The petition or resolution shall identify the name, duties and responsibilities of each office; or

(5) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the petition or resolution. The petition or resolution shall specifically identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5607, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5606.

**31-5608. County assessor.** — For purposes of this act, the duties of the county assessor shall be as provided in title 63, Idaho Code, and as otherwise prescribed by law. A county assessor:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or



(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5608, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5606.

**31-5609. County sheriff.** — For purposes of this act, the duties of the county sheriff shall be as provided in chapter 22, title 31, Idaho Code, and as otherwise prescribed by law. A county sheriff:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers or appointed persons as provided in the resolution or petition. The office of sheriff may not be consolidated with the office of the prosecuting attorney or the office of the clerk of the district court. The resolution or petition shall identify those duties of the county sheriff for which each other officer or appointee shall be responsible. [I.C., § 31-5609, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5606.

**31-5610. County coroner.** — For purposes of this act the duties of the county coroner shall be as provided in chapter 28, title 31, Idaho Code, and as otherwise prescribed by law. A county coroner:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a different term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated with the duties and responsibilities of the office to be performed by one (1) or more other elected officers or appointed persons as provided in the resolution or petition. The resolution or petition shall identify those duties of the office for which each other officer or appointee shall be responsible. [I.C., § 31-5610, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5606.

**31-5611. County prosecuting attorney.** — For purposes of this act, the duties of the county prosecuting attorney shall be as provided in chapter 26, title 31, Idaho Code, and as otherwise prescribed by law. A county prosecuting attorney:

(1) Shall continue to be elected to a term of four (4) years and to perform all the duties and responsibilities of the office; or

(2) Shall be elected to a term of office as provided in the resolution or petition, but not to exceed four (4) years, and perform all the duties of the office; or

(3) Shall be appointed by the board of county commissioners or the executive board with the advice and consent of the entire board of county commissioners, be supervised by the entire board or the executive board, as applicable, and perform all the duties of the office; or

(4) The office shall be eliminated as a separate office with the duties and responsibilities of the office to be performed by one (1) or more other qualified elected officers, appointed persons or persons retained on a contractual basis as provided in the resolution or petition. The office of prosecuting attorney may not be consolidated with the office of sheriff or the office of clerk of the district court. The resolution or petition shall identify those duties of the office for which each other officer, appointee or party to the contract shall be responsible. [I.C., § 31-5611, as added by 1996, ch. 283, § 7, p. 914; am. 1996, ch. 326, § 2, p. 1111.]

#### STATUTORY NOTES

**Compiler's Notes.** — For words "this act" see Compiler's notes, § 31-5606.

**Effective Dates.** — Section 11 of S.L.

1996, ch. 283 declared an emergency. Approved March 15, 1996.

Section 3 of S.L. 1996, ch. 326 read: "This

act shall be effective upon the passage and approval of House Bill 448 [S.L. 1996, ch. 283] in the Second Regular Session of the Fifty-third Idaho Legislature [March 15, 1996]."

## CHAPTER 57

### CONSOLIDATION OF OFFICES AMONG COUNTIES

#### SECTION.

31-5701. Consolidation of offices in two or more counties with other characteristics of existing form in each county remaining unchanged — Office of commissioner may not be consolidated.

#### SECTION.

31-5702. Petition or resolution for consolidation to be filed in each participating county — Question to be submitted — All counties must approve — Transition.  
31-5703. Counties remain individually responsible.

**31-5701. Consolidation of offices in two or more counties with other characteristics of existing form in each county remaining unchanged — Office of commissioner may not be consolidated. —** The form of government provided in this chapter shall consist of the consolidation of one (1) or more county offices, other than the office of county commissioner, in two (2) or more counties, with all other characteristics of the form of government existing in each participating county to continue unchanged. No petition or resolution proposing a consolidation of offices between or among counties shall propose any other optional form of county government or any other changes in the existing form of government in any of the counties proposing to consolidate offices; except that the question of adopting another optional form of government in a participating county as proposed by a separate petition or resolution may be submitted at the same general election by the governing body of that county, as provided in section 31-5005, Idaho Code. The petition or resolution shall identify each of the counties participating in the consolidation. [I.C., § 31-5701, as added by 1996, ch. 283, § 8, p. 914.]

**31-5702. Petition or resolution for consolidation to be filed in each participating county — Question to be submitted — All counties must approve — Transition. —** (1) Upon a resolution or petition meeting the signature requirements of section 31-5004(1)(b), Idaho Code, filed with the governing body of each participating county, the governing body of each participating county shall submit to its electors at the same general election the question of whether the duties and responsibilities of one (1) or more county offices shall be consolidated between two (2) or more counties as proposed in the resolution or petition with all other characteristics of the county government of each participating county to continue unchanged. The petition or resolution submitted to the electors of each county shall meet the requirements of section 31-5004, Idaho Code, and shall contain the same proposals with respect to the office or offices to be consolidated. The consolidation shall be approved upon a majority vote of the electors in each county, voting separately. If the consolidation is not approved in all participating counties, the measure shall be deemed to have failed in all participating counties.



(2) The petition or resolution for consolidation filed in each of the participating counties shall provide, with respect to each office proposed to be consolidated, as follows:

(a) For the election of one (1) officer to perform the duties and responsibilities of the office on behalf of all the participating counties for a term not to exceed four (4) years, citing the effect of the consolidation upon any incumbents in office in the participating counties as authorized in section 31-5007, Idaho Code. Any residency requirements of the office shall be waived in the event of a consolidation under the provisions of this chapter; or

(b) For the appointment of one (1) or more parties, or for the execution of one (1) or more contracts with one (1) or more service providers to perform the duties and responsibilities of the office being consolidated on behalf of all of the participating counties. The resolution or petition filed in each participating county shall indicate by whom and the manner in which any appointee is to be appointed and by whom and the manner in which any service provider is to be selected. Any person proposed for appointment and any contract with a service provider must be approved by the governing body of each participating county.

(3) The petition or resolution submitted to the electors shall provide for the orderly transition to the proposed consolidation of offices. [I.C., § 31-5702, as added by 1996, ch. 283, § 8, p. 914.]

**31-5703. Counties remain individually responsible.** — The consolidation of offices shall not relieve a county from the performance of all the duties and responsibilities required to be performed by the county or any officer of the county under the constitution and laws of the state of Idaho or the United States, [I.C., § 31-5703, as added by 1996, ch. 283, § 8, p. 914.]

## STATUTORY NOTES

**Effective Dates.** — Section 11 of S.L. 1996, ch. 283 declared an emergency. Approved March 15, 1996.

## CHAPTER 58

### CHARTER FORM OF COUNTY GOVERNMENT

#### SECTION.

- 31-5801. Charter form.
- 31-5802. Election of charter commission —  
Charter submitted to electors.
- 31-5803. Charter commission — Qualifications — Election.
- 31-5804. Charter commission terms — Vacancies.
- 31-5805. Charter commission — Organization — Meetings — Conduct of business.

#### SECTION.

- 31-5806. Charter — Publication — Dissolution of charter commission.
- 31-5807. Powers of county under charter.
- 31-5808. Charter provisions — Elected legislative body — Executive structure — Tax administration.
- 31-5809. Other charter provisions — Effective date of charter.

**31-5801. Charter form.** — The form of government provided in this chapter shall be known as the “charter” form. A charter form of government shall be established by a written charter approved by a majority of the electors of the county as provided in this chapter. The charter form as provided in this chapter shall be an authorized optional form of county government within the meaning of article XVIII, section 12 of the Idaho Constitution, and shall be authorized in addition to those optional forms provided in chapters 50 through 57, title 31, Idaho Code. Unless provided otherwise in this chapter, the provisions of the optional forms of county government act shall apply to this chapter. [I.C., § 31-5801, as added by 1996, ch. 129, § 1, p. 447.]

#### RESEARCH REFERENCES

**C.J.S.** — 20 C.J.S. Counties, §§ 7, 40.

**31-5802. Election of charter commission — Charter submitted to electors.** — (1) The charter to be submitted to the electors shall be drafted by a charter commission to be elected upon the approval of a petition or resolution to elect a charter commission as provided in subsection (2) of this section.

(2) The question of whether a charter commission shall be elected shall be submitted to the voters upon a petition or resolution initiated as provided in section 31-5004(1), Idaho Code. The petition or resolution to elect a charter commission shall contain a statement of the anticipated costs and expenditures of the charter commission and a description of the revenue sources intended to meet those costs and expenditures.

(3) The question of electing a charter commission shall be submitted as follows:

Shall a charter commission, comprised of (state number) commissioners, be elected to draft a charter for (name county)?

(4) Any county approving the election of a charter commission shall continue to operate under its existing form of government until a charter has been approved by the electors. If a charter has not been adopted by the electors within four (4) years of the election of a charter commission, the charter commission shall be deemed dissolved by operation of law. Any subsequent question of whether a charter commission should be elected to draft a proposed charter for the county must be resubmitted to the electors as provided in this chapter.

(5) The charter commission shall submit a proposed charter to the electors at a general election. If the charter commission submits a charter to the electors, the question shall be submitted as follows:

Vote for one:

In favor of retaining the (name current form of government) form of county government.

In favor of adopting the charter proposed for (name county).

(6) Any amendment to a charter must be approved by a majority of the electors of the county voting at a general election. Amendments may be submitted upon a majority vote of the governing body, or upon a petition to

amend the charter, the requirements for which shall be specified in the charter. [I.C., § 31-5802, as added by 1996, ch. 129, § 1, p. 447.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words in parentheses so appeared in the law as enacted.

#### **31-5803. Charter commission — Qualifications — Election. —**

(1) The petition or resolution to elect a charter commission shall specify the number of commissioners to be elected, which shall be an odd number of not less than five (5) nor more than nine (9) members. Members of the commission shall be elected on a nonpartisan basis.

(2) The question to elect a charter commission shall be submitted at the primary election. If the question receives a majority vote, the members of the commission shall be elected at the following general election.

(3) Each member of the charter commission shall be a qualified elector of the county and shall have resided in the county one (1) year preceding his election. Elected officials of the county shall not be eligible. [I.C., § 31-5803, as added by 1996, ch. 129, § 1, p. 447.]

**31-5804. Charter commission terms — Vacancies. —** (1) The term of office of a member of a charter commission begins when a certificate of his election has been issued and concludes thirty (30) days after the election to adopt the charter proposed by the commission, or four (4) years after his election, whichever is earlier.

(2) Vacancies on the commission shall be filled by appointment of the governing body within thirty (30) days after the vacancy occurs.

(3) Members shall serve without compensation, but shall be reimbursed for expenses lawfully incurred in the performance of their duties. [I.C., § 31-5804, as added by 1996, ch. 129, § 1, p. 447.]

**31-5805. Charter commission — Organization — Meetings — Conduct of business. —** A charter commission shall meet within thirty (30) days of its election and shall organize by electing from its members a chairman, a vice-chairman, and clerk-secretary. The provisions of section 31-5104, Idaho Code, shall apply to a charter commission, except as otherwise specified in this chapter. [I.C., § 31-5805, as added by 1996, ch. 129, § 1, p. 447.]

**31-5806. Charter — Publication — Dissolution of charter commission. —** (1) Upon the approval of the charter by a majority of the full membership of the charter commission, copies shall be prepared for public distribution and must be available not less than thirty (30) days prior to the election on adopting the charter. The text of the charter or a summary thereof shall be published in the official newspaper of the county once each week for two (2) successive weeks within thirty (30) days after its approval by the commission and again within not less than fourteen (14) days prior to the election on the charter.



(2) The charter commission shall be deemed dissolved by operation of law thirty (30) days after the charter is adopted or within four (4) years after its election if no charter is adopted within that time. [I.C., § 31-5806, as added by 1996, ch. 129, § 1, p. 447.]

**31-5807. Powers of county under charter.** — A county, by charter, may have and exercise all of the powers, duties, privileges and rights available to a county under the constitution and laws of the state of Idaho. The enumeration of powers in a charter shall not expand the county's powers granted by the constitution or laws of the state of Idaho, nor shall a charter limit or prohibit the performance of duties required to be performed by the county under the constitution or laws of the state of Idaho. In the event of any conflict between the provisions of a charter and the provisions of the constitution or statutes of the state of Idaho, or the United States, the constitution and statutes shall prevail. [I.C., § 31-5807, as added by 1996, ch. 129, § 1, p. 447.]

**31-5808. Charter provisions — Elected legislative body — Executive structure — Tax administration.** — (1) The charter shall expressly provide for an elected legislative body to perform the legislative functions of the county government. The charter shall define the following:

- (a) Name of the legislative body;
- (b) Number of members;
- (c) Terms of office;
- (d) Qualifications of office;
- (e) Manner of filling vacancies;
- (f) Date and manner of election and whether at large or by districts;
- (g) Whether the election shall be partisan or nonpartisan;
- (h) The powers and duties of the legislative body; and
- (i) Any other information necessary to give a complete description of the legislative structure of the county government.

(2) The charter shall expressly define the officers who will perform the executive functions of the county government, including, without limitation, the chief executive and administrative officer or officers, the chief financial officer, the chief law enforcement officer, and the officer responsible for performing the duties and functions of the prosecuting attorney. With respect to each officer performing executive functions the charter shall define the following:

- (a) Whether appointed, hired on a contractual basis, or elected; and, if elected,
- (b) The term of office;
- (c) The qualifications for office;
- (d) The manner of filling vacancies;
- (e) The date of election;
- (f) Whether the election shall be partisan or nonpartisan;
- (g) The powers and duties of each officer;
- (h) The departments or other organizational structures which will comprise the executive branch of the government; and

(i) Any other information necessary to provide a complete description of the executive structure of the government.

(3) The charter shall expressly define the officers responsible for the performance of the powers and duties of the county with respect to taxation, including, without limitation, all those duties required by law to be performed by the board of county commissioners; the county assessor, the county treasurer and the county auditor. The charter shall provide the duties and functions of each officer.

(4) Notwithstanding the foregoing, the charter may provide that executive and administrative functions will be performed by one (1) or more members of the legislative body. [I.C., § 31-5808, as added by 1996, ch. 129, § 1, p. 447.]

**31-5809. Other charter provisions — Effective date of charter. —**

The charter shall include such provisions as may be necessary to permit an orderly transition to the new form of government. The listing of charter provisions in this chapter shall not be construed to prevent the inclusion of additional lawful provisions in charters. The charter shall specify the date on which the charter will take effect. [I.C., § 31-5809, as added by 1996, ch. 129, § 1, p. 447.]

**STATUTORY NOTES**

**Effective Dates.** — Section 2 of S.L. 1996, ch. 129 declared an emergency. Approved March 8, 1996.





## TITLE 32

### DOMESTIC RELATIONS

#### CHAPTER.

1. PERSONS, §§ 32-101 — 32-108.
2. MARRIAGE — NATURE AND VALIDITY OF MARRIAGE CONTRACT, §§ 32-201 — 32-209.
3. SOLEMNIZATION OF MARRIAGE, §§ 32-301 — 32-311.
4. MARRIAGE LICENSES, CERTIFICATES, AND RECORDS, §§ 32-401 — 32-419.
5. ANNULMENT OF MARRIAGE, §§ 32-501 — 32-506.
6. DIVORCE — GROUNDS AND DEFENSES, §§ 32-601 — 32-616.
7. DIVORCE ACTIONS, §§ 32-701 — 32-719.
8. DIVORCES FOR INSANITY, §§ 32-801 — 32-805.

#### CHAPTER.

9. HUSBAND AND WIFE — SEPARATE AND COMMUNITY PROPERTY, §§ 32-901 — 32-929.
10. PARENT AND CHILD, §§ 32-1001 — 32-1009.
11. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, §§ 32-11-101 — 32-11-405.
12. MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT, §§ 32-1201 — 32-1217.
13. PARENT RESPONSIBILITY ACT, § 32-1301.
14. COORDINATED FAMILY SERVICES, §§ 32-1401 — 32-1406.
15. [RESERVED]
16. FINANCIAL INSTITUTION DATA MATCH PROCESS, §§ 32-1601 — 32-1614.

## CHAPTER 1

### PERSONS

#### SECTION.

- 32-101. Minors defined.
- 32-102. Unborn child as existing person.
- 32-103. Contracts of minors — Disaffirmance.
- 32-104. Contracts of minors — Necessaries.
- 32-105. Contracts of minors authorized by statute.

#### SECTION.

- 32-106. Contracts of idiots.
- 32-107. Contracts of insane persons.
- 32-108. Contracts of insane persons after adjudication of incapacity.

#### **32-101. Minors defined. —** Minors are:

1. Males under eighteen (18) years of age.
2. Females under eighteen (18) years of age.
3. Provided, that any male or any female who has been married shall be competent to enter a contract, mortgage, deed of trust, bill of sale and conveyance, and sue or be sued thereon. [1864, p. 515; R.S., § 2405; reen. R.C. & C.L., § 2601; C.S., § 4583; I.C.A., § 31-101; am. 1963, ch. 103, § 1, p. 323; am. 1972, ch. 117, § 1, p. 233.]

## JUDICIAL DECISIONS

### ANALYSIS

Child support.  
Constitutionality.  
Judicial notice.  
Life insurance.

#### **Child Support.**

Divorce decree awarding support payments for minor male children until age 21 held invalid after the amendment of this section by

S.L. 1972, ch. 117, § 1, p. 233 which lowered the age of majority for males to eighteen years. *Speer v. Quinlan*, 96 Idaho 119, 525 P.2d 314 (1974).

**Constitutionality.**

Prior to the 1972 amendment, this section provided different ages of majority for men and women, which was a violation of the equal protection clause of the Fourteenth Amendment. *Harrigfeld v. District Court of Seventh Judicial Dist.*, 95 Idaho 540, 511 P.2d 822 (1973).

**Judicial Notice.**

Idaho courts cannot take judicial notice of a sister state's law and testimony of a party to a divorce proceeding as to the age of majority of persons in a sister state was inconclusive testimony of layman and did not have the effect of proving the law of a sister state. *White v. White*, 94 Idaho 26, 480 P.2d 872 (1971).

**Life Insurance.**

As the discrimination between males and females under this section concerning the age

at which they reach majority has been held unconstitutional and males reach their majority at 18, when deceased became an insured under a group life insurance policy at the age of 18 he was not a minor and was competent to designate defendant as beneficiary under the policy. *Aue v. Ericks*, 96 Idaho 13, 523 P.2d 830 (1974).

**Cited in:** *Piatt v. Piatt*, 32 Idaho 407, 184 P. 470 (1919); *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963); *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977); *Melling v. Chaney*, 126 Idaho 554, 887 P.2d 1061 (1994); *State, Dep't of Health & Welfare ex rel. Washington ex rel. Nicklaus v. Annen*, 126 Idaho 691, 889 P.2d 720 (1995).

**32-102. Unborn child as existing person.** — A child conceived, but not yet born, is to be deemed an existing person so far as may be necessary for its interests, in the event of its subsequent birth. [R.S., § 2406; reen. R.C. & C.L., § 2602; C.S., § 4584; I.C.A., § 31-102.]

**JUDICIAL DECISIONS****ANALYSIS**

Construction.  
Prenatal injuries.

**Construction.**

This section and § 5-310 purport to deal with different subject matters and attempt to protect different interests. They are not statutes in pari materia and hence § 5-310 does not incorporate within its terms the definition of "person" contained in this section. *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11 (1982).

**Prenatal Injuries.**

A cause of action will lie on behalf of a viable child who sustains prenatal injuries, but is subsequently born alive, if at the time of injury the fetus was viable. *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11 (1982).

**32-103. Contracts of minors — Disaffirmance.** — In all cases other than those specified in the next two (2) sections the contract of a minor, if made whilst he is an unmarried minor may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives. [R.S., § 2407; reen. R.C. & C.L., § 2603; C.S., § 4585; I.C.A., § 31-103; am. 1972, ch. 117, § 2, p. 233.]

**STATUTORY NOTES**

**Cross References.** — Minor may make marriage settlement, § 32-920.

Minor's power to make contracts and incur obligations under G.I. bill of rights, § 65-501.

**Effective Dates.** — Section 3 of S.L. 1972, ch. 117 provided the act should take effect on and after July 1, 1972.

## JUDICIAL DECISIONS

## ANALYSIS

Claim and delivery.  
 Employment of minor.  
 Offer to return.  
 Voidability.

**Claim and Delivery.**

Plea of infancy is no defense in action for claim and delivery, where infant's right to possession is contingent on compliance with contract under which he came into possession. *Commercial Credit Co. v. Mizer*, 50 Idaho 388, 296 P. 580 (1931).

**Employment of Minor.**

Employment of minor though in violation of the Child Labor Law was not void, but created the relationship of employer and employee under the Workmen's Compensation Act pursuant to provisions of former § 72-1011 (now see § 72-102). *Lockard v. St. Maries Lumber Co.*, 76 Idaho 506, 285 P.2d 473 (1930).

The industrial accident board (now industrial commission) had exclusive jurisdiction of claim for injuries sustained by a minor, age 15, while working for a lumber company. *Lockard v. St. Maries Lumber Co.*, 76 Idaho 506, 285 P.2d 473 (1930).

**Offer to Return.**

Capacity of a minor to contract is not absolute, being voidable upon his restoring, or offering to restore, the consideration. *Loomis v. Imperial Motors, Inc.*, 88 Idaho 74, 396 P.2d 467 (1964). (Decision prior to 1972 amendment).

Where an unmarried minor over the age of 18 purchased an automobile for cash, disaffirmed the contract and offered the return of the automobile, refusal of the offer to return voided the contract ab initio. *Loomis v. Imperial Motors, Inc.*, 88 Idaho 74, 396 P.2d 467 (1964). (Decision prior to 1972 amendment).

In an action by a minor over eighteen years of age to disaffirm a contract for the repair of a motor bike engine and recover \$180 paid to repairman, where the defendant had purchased new parts and performed labor and the plaintiff offered to return the parts but made no offer to pay the reasonable value of the labor, plaintiff could not recover without proof of the reasonable value of the labor. *Clark v. Stites*, 89 Idaho 191, 404 P.2d 339 (1965). (Decision prior to 1972 amendment).

**Voidability.**

General rule of voidability of contracts of minors does not apply if contract is for a necessity, or if contract is one authorized by statute. *Lahey v. Caldwell*, 72 Idaho 52, 237 P.2d 610 (1951).

Contracts of minors are not void, though subject to disaffirmance. *Lockard v. St. Maries Lumber Co.*, 76 Idaho 506, 285 P.2d 473 (1930).

**32-104. Contracts of minors — Necessaries.** — A minor can not disaffirm a contract otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. [R.S., § 2408; reen. R.C. & C.L., § 2604; C.S., § 4586; I.C.A., § 31-104.]

## STATUTORY NOTES

**Cross References.** — Administrator, minor not competent to serve, § 15-3-203.

## JUDICIAL DECISIONS

**General Rule.**

General rule of voidability of contracts of minors does not apply if contract is for a

necessity. *Lahey v. Caldwell*, 72 Idaho 52, 237 P.2d 610 (1951).

**32-105. Contracts of minors authorized by statute.** — A minor can not disaffirm an obligation otherwise valid, entered into by him under the express authority or direction of a statute. [R.S., § 2409; R.C. & C.L., § 2605; C.S., § 4587; I.C.A., § 31-105.]



## STATUTORY NOTES

**Cross References.** — Marriage settlements, capacity of minors to make, § 32-920. Minors may hold and transfer stock in land and building corporations, § 30-1310. Minor's power to make contracts and incur obligations under G.I. bill of rights, § 65-501.

## JUDICIAL DECISIONS

**Cited in:** *Lakey v. Caldwell*, 72 Idaho 52, 237 P.2d 610 (1951).

**32-106. Contracts of idiots.** — A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. [R.S., § 2410; reen R.C. & C.L., § 2606; C.S., § 4588; I.C.A., § 31-106.]

## STATUTORY NOTES

**Cross References.** — Guardians of incapacitated persons, §§ 15-5-301 — 15-5-313.

## JUDICIAL DECISIONS

**Cited in:** *Ratliff v. Baltzer's Adm'r*, 13 Idaho 152, 89 P. 71 (1907); *Miles v. Johanson*, 40 Idaho 782, 238 P. 291 (1925).

**32-107. Contracts of insane persons.** — A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission. [R.S., § 2411; reen. R.C. & C.L., § 2607; C.S., § 4589; I.C.A., § 31-107.]

## STATUTORY NOTES

**Cross References.** — Guardians of incapacitated persons, §§ 15-5-301 — 15-5-313.

## JUDICIAL DECISIONS

**Contracts of Partially Insane Persons.**

Where it is made to appear that a person is insane upon one subject his contracts in regard to other matters will be scrutinized

closely by court when their validity and his competency to make them are questioned. *Ratliff v. Baltzer's Adm'r*, 13 Idaho 152, 89 P. 71 (1907).

**32-108. Contracts of insane persons after adjudication of incapacity.** — After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish

the presumption of legal capacity in such person from the time of such discharge. [R.S., § 2412; reen R.C. & C.L., § 2608; C.S., § 4590; I.C.A., § 31-108.]

## JUDICIAL DECISIONS

### ANALYSIS

Effect of commitment.  
Effect on power of district court.  
Evidence admissible.  
Feeble-minded persons.  
Restoration to capacity.

#### Effect of Commitment.

A commitment upon a preliminary or summary hearing under § 66-301 (repealed) is not a conclusive determination of incapacity within the meaning of this section. *Fleming v. Bithell*, 56 Idaho 261, 52 P.2d 1099 (1935).

#### Effect on Power of District Court.

This section does not oust the jurisdiction of the district court to determine whether a party to a contract was competent to contract at the time contract was made, where the validity of the contract is attacked on that ground; the issue of incompetency is merely incidental to the main issue. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

#### Evidence Admissible.

Regardless of whether an action is one to quiet title and for declaratory judgment, capacity of parties to contract may be determined by the district court, and the class of proof admissible in such cases is governed by the legal status of the party whose competency is in question, that is, whether he has

been committed or declared incompetent, and, if so, whether by summary proceeding or by regular adjudication of insanity. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

#### Feeble-Minded Persons.

Contract made by person of defective mind but not entirely without understanding, who comprehends the full force and effect of such contract and upon whom no fraud or deception has been practiced, will not be rescinded. *Ratliff v. Baltzer's Adm'r*, 13 Idaho 152, 89 P. 71 (1907).

#### Restoration to Capacity.

This section is to be read in connection with the two preceding ones, and when so read, it is apparent that when person has been judicially determined insane, his incapacity to contract has been judicially determined and words "restoration to capacity," except as to provision making physician's certificate prima facie evidence of legal capacity, means judicial restoration to capacity. *Miles v. Johanson*, 40 Idaho 782, 238 P. 291 (1925).

## CHAPTER 2

### MARRIAGE — NATURE AND VALIDITY OF MARRIAGE CONTRACT

#### SECTION.

32-201. What constitutes marriage — No common-law marriage after January 1, 1996.  
32-202. Persons who may marry.  
32-203, 32-204. [Repealed.]  
32-205. Incestuous marriages.

#### SECTION.

32-206. Marriages between first cousins.  
32-207. Polygamous marriages.  
32-208. Release from contract for unchastity.  
32-209. Recognition of foreign or out-of-state marriages.

**32-201. What constitutes marriage — No common-law marriage after January 1, 1996.** — (1) Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and a solemnization as authorized and provided by law. Marriage created by a mutual assumption of marital rights, duties or obligations shall not be recognized as a lawful marriage.

(2) The provisions of subsection (1) of this section requiring the issuance of a license and a solemnization shall not invalidate any marriage contract in effect prior to January 1, 1996, created by consenting parties through a mutual assumption of marital rights, duties or obligations. [1877, p. 24, § 1; R.S., § 2420; reen. R.C. & C.L., § 2611; C.S., § 4591; I.C.A., § 31-201; am. 1995, ch. 104, § 3, p. 334.]

### STATUTORY NOTES

**Cross References.** — Annulment of marriage, §§ 32-501 — 32-505.

Domestic violence project grants, §§ 39-5201 — 39-5213.

Husband and wife, § 32-901 et seq.

Marriage settlements, §§ 32-916 — 32-920.

**Legislative Intent.** — Section 1 of S.L. 1995, ch. 104 read: "It is the intent of this act to promote the stability and best interests of marriage and the family. Marriage is the

insitution that is the foundation of the family and of society. Its stability is basic to morality and civilization and of vital interest to society and the state. Common-law marriages entered into in this state on and after January 1, 1996, will no longer be recognized."

**Effective Dates.** — Section 6 of S.L. 1995, ch. 104 provided that the act should be in full force and effect on and after January 1, 1996.

### JUDICIAL DECISIONS

#### ANALYSIS

Common-law marriage.

—Status of wife.

Consent.

Estoppel to deny marriage.

In general.

Presumption concerning marriage.

Privileged communication.

Proof of marriage.

Residents of other states.

#### Common-law Marriage.

Where the husband entered into a consent marriage at a time when his first wife was living, the continuance of the second marital relation and assumption of its duties after decree of divorce from his first wife became final amounted to a "consensual marriage" which could be avoided only by death or divorce. *Morrison v. Sunshine Mining Co.*, 64 Idaho 6, 127 P.2d 766 (1942) (decision prior to 1995 amendment).

No common-law marriage existed prior to marriage ceremony, where wife never asserted that she was married to husband prior to marriage, and the parties' cohabitation between 1980 and 1986 was erratic. *McCoy v. McCoy*, 125 Idaho 199, 868 P.2d 527 (Ct. App. 1994) (decision prior to 1995 amendment).

A common-law marriage arises where the consent of the parties capable of making it is followed by a mutual assumption of marital rights, duties or obligations. *Hamby v. J.R. Simplot Co.*, 94 Idaho 794, 498 P.2d 1267 (1972) (decision prior to 1995 amendment).

Where the testimony indicated that the parties lived together, assumed marital rights and duties, including the conception and birth

of a son, and that they held themselves out as husband and wife, beginning in June, 1967, the trial court's finding that the marriage relationship began in June, 1970 on the date of the ceremonial marriage was not supported by substantial evidence. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983) (decision prior to 1995 amendment).

Because parties intentionally chose not to obtain a marriage license, their purported marriage violated § 32-201(1) and summary judgment was properly awarded to defendant in plaintiff's action for divorce. *Dire v. Dire-Blodgett*, 140 Idaho 777, 102 P.3d 1096 (2004).

#### —Status of Wife.

Where a husband entered into consent marriage at a time when the first wife was still living, and continued in such second marital relation, and he and the second wife conducted themselves as husband and wife after the divorce decree from the first wife had become final, and in application for employment, the husband named the second wife as his wife, such second wife was the husband's "widow" on his death, and entitled to workmen's compensation. *Morrison v. Sunshine*



Mining Co., 64 Idaho 6, 127 P.2d 766 (1942).

A claimant did not fail to establish her status as employee's "widow" entitled to workmen's compensation because consensual marriage was consummated in Montana without recording joint declaration of marriage as required by Montana directory statutes. *Morrison v. Sunshine Mining Co.*, 64 Idaho 6, 127 P.2d 766 (1942).

Where appellant never held herself out as a married woman, received public assistance for herself and child, had the electric power billed to herself, obtained credit by executing a promissory note and mortgage in her own name, she did not establish that she was the surviving common-law wife of the decedent and was not entitled to letters of administration. *In re Estate of Gholson*, 83 Idaho 270, 361 P.2d 791 (1961) (decision prior to 1995 amendment).

### Consent.

Even though a marriage was first consented to and consummated by Idaho parties while in Washington, a marriage was shown to be also consented to and consummated in Idaho where the parties freely acknowledged the relationship in Idaho upon their return from Washington. *Foster v. Diehl Lumber Co.*, 77 Idaho 26, 287 P.2d 282 (1955) (decision prior to 1995 amendment).

Consent required by this section must be given when the parties enter into the contractual responsibilities of marriage. *In re Estate of Gholson*, 83 Idaho 270, 361 P.2d 791 (1961).

A requirement of a specific formal marriage contract would be contrary to allowing consent to be implied from the parties' act and conduct; thus, evidence of conduct by and between the parties consistent with the existence of a common-law marriage may be probative of consent. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

Consent to enter into a common-law relationship may be implied and established from the circumstances and facts of the parties' relationship in cohabiting, assuming the rights, duties and obligations of marriage, and holding out of themselves as husband and wife. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

Where persons having the capacity to contract have held themselves out to be husband and wife, and have gained that general reputation in the community, or where they acknowledge that they are husband and wife, a court may be warranted in drawing the inference that at the outset there was then present mutual consent between the parties to assume a marital relationship. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

Although not separately designated elements of the doctrine under the statutory framework, proof of cohabitation of the parties and holding oneself out as being married are two of the best methods for proving that there was consent to the contract in the absence of a writing to that effect and the element of consent found in this section and needed to establish common law marriage may be proven by circumstantial evidence such as cohabitation, reputation, and the manner in which the couple characterize their relationship. *Hall v. Becker*, 126 Idaho 848, 893 P.2d 211 (1995).

### Estoppel to Deny Marriage.

Plaintiff, who entered into ceremonial marriages on two occasions with defendant, and who later returned to defendant and lived with defendant in common-law relationship following unsuccessful marriages with two other persons was entitled to a divorce from common-law marriage with defendant where there was no evidence that third husband had died or had secured a divorce from the plaintiff, as the defendant was estopped by virtue of his acts and conduct from declaring that plaintiff's marriage with a third husband was a bar to the common-law marriage of plaintiff and defendant. *Warner v. Warner*, 76 Idaho 399, 283 P.2d 931 (1955) (decision prior to 1995 amendment).

### In General.

In contrast with other jurisdictions, Idaho has never viewed the doctrine of common-law marriage with disfavor. Together with a small number of other states, Idaho permits a non-ceremonial marriage to be proven by a preponderance of the evidence. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

There are two forms of marriage authorized in this state. One is a marriage that is solemnized by a person authorized to perform marriages, witnessed, authenticated, with a certificate recorded, as provided by §§ 32-301 through 32-309; the other is a common-law marriage. *Freiburghaus v. Freiburghaus*, 103 Idaho 679, 651 P.2d 944 (Ct. App. 1982) (decision prior to 1995 amendment).

### Presumption Concerning Marriage.

Though there was a legal impediment to prevent a valid marriage, as where there was a former husband or wife living at the time, still a valid marriage will be presumed to have occurred after removal of such impediment by death or divorce, where parties continue their marital duties, rights and obligations. *Huff v. Huff*, 20 Idaho 450, 118 P. 1080 (1911) (decision prior to 1995 amendment).

Proof of a marriage, regular or irregular, raises a strong presumption of its legality,

casting the burden on the party attacking it to show that it is illegal or void. *Mauldin v. Sunshine Mining Co.*, 61 Idaho 9, 97 P.2d 608 (1939) (decision prior to 1995 amendment).

Presumption of marriage from cohabitation, apparently matrimonial, is one of the strongest presumptions known to the law. *Mauldin v. Sunshine Mining Co.*, 61 Idaho 9, 97 P.2d 608 (1939) (decision prior to 1995 amendment).

Where the original cohabitation was precluded by a ceremonial marriage which was void because one of the parties was already married, the continuance of the cohabitation after the removal of the impediment by death of the former husband or wife, in connection with circumstances tending to show that the parties regarded their relations as of a matrimonial character, and held themselves out as husband and wife, creates a presumption of marriage, although there is no evidence of another ceremony. *Nicholas v. Idaho Power Co.*, 63 Idaho 675, 125 P.2d 321 (1942) (decision prior to 1995 amendment).

All reasonable presumptions must be indulged in in favor of the regularity and legality of marriage regularly solemnized and the burden of removing such presumption is cast upon the party attacking the validity of the marriage to show by clear, cogent and satisfactory evidence that a legal impediment to such marriage existed at the time of the solemnization thereof. *Lea v. Galbraith*, 64 Idaho 724, 137 P.2d 320 (1943) (decision prior to 1995 amendment).

When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of proof, the law raises a strong presumption of its legality, casting the burden of proof upon the party objecting and requiring him in every particular to make plain, against the constant pressure of this presumption, the truth of law and fact that the marriage is illegal and void. *Thomey v. Thomey*, 67 Idaho 393, 181 P.2d 777 (1947) (decision prior to 1995 amendment).

The rule adopted in this jurisdiction is that the law presumes morality, and not immorality; marriage, and not concubinage; legitimacy, and not bastardy — every intendment of the law leans toward matrimony. *Thomey v. Thomey*, 67 Idaho 393, 181 P.2d 777 (1947) (decision prior to 1995 amendment).

### **Privileged Communication.**

Proof of the existence of a common law marriage allows a common law spouse to assert the privilege of confidential communication between spouses as provided by I.C., § 9-203. *Still v. State*, 97 Idaho 375, 544 P.2d 1145 (1976) (decision prior to 1995 amendment).

### **Proof of Marriage.**

Proof of marriage by the testimony of one of the parties is sufficient, as the presumption in

favor of validity of marriage must be overcome by clear and positive evidence. *Mauldin v. Sunshine Mining Co.*, 61 Idaho 9, 97 P.2d 608 (1939) (decision prior to 1995 amendment).

Statement by deceased to bookkeeper of his employer relative to taking of deductions that he was not married was overcome by his representation in writing to motel keeper that he and claimant were married, and by his introduction of claimant as his wife in public. *Foster v. Diehl Lumber Co.*, 77 Idaho 26, 287 P.2d 282 (1955) (decision prior to 1995 amendment).

Finding by workers' compensation board that the relationship of the deceased and the claimant was "a marriage per verba de futuro cum copula" was not correct where the record showed that the deceased and the claimant were persons of high moral character who openly and publicly acknowledged that they were husband and wife, and showed a marriage by mutual assumption of marital rights, duties and obligations in full compliance with this section. *Foster v. Diehl Lumber Co.*, 77 Idaho 26, 287 P.2d 282 (1955) (decision prior to 1995 amendment).

Finding of district court that petitioner, alleged common-law wife of deceased, had not established a prima facie marriage by consent and consummation, would not be overruled by Supreme Court, where there was competent evidence that petitioner and deceased had only been friends, and their cohabiting furtive. In re *Estate of Koshman*, 77 Idaho 96, 288 P.2d 652 (1955) (decision prior to 1995 amendment).

The existence of a common-law marriage may be established by evidence that the parties have acquired a uniform and general reputation as husband and wife and may be negated by evidence that the parties held themselves out as single persons. *Hamby v. J.R. Simplot Co.*, 94 Idaho 794, 498 P.2d 1267 (1972) (decision prior to 1995 amendment).

Whereas in most instances, questions as to the existence of a common-law marriage will arise only after death, such a marriage may be proven by the testimony of one of the parties. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

Where it was established that a man and a woman were persons without impediment, who consented to and consummated a marriage by cohabitation and mutual assumption of marital rights, duties or obligations in compliance with this section, a strong presumption of marriage was created which cast the burden of proof upon the contestants to rebut such presumption by clear and positive evidence. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).



Where, in an action between deceased's common-law wife and his children by his first marriage to determine the beneficiary of a life insurance policy, the continued use by the wife of her former surname for the purpose of continuing to receive her civil service widow pension following the death of her first husband did not negate her consent to enter the subsequent common-law marriage nor render that marriage void. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

To make a prima facie showing of a marriage, the alleged wife's evidence must have established not only consent, but also mutual assumption of the rights, duties and responsibilities of marriage, by cohabitation and by holding themselves out to the community as husband and wife; only then would the alleged common-law husband have to overcome the presumption of a marriage by providing "clear and positive proof" to the contrary. *Freiburghaus v. Freiburghaus*, 103 Idaho 679, 651 P.2d 944 (Ct. App. 1982) (decision prior to 1995 amendment).

Where plaintiff seeking divorce from alleged common-law marriage did not show a solemnization of such marriage, and where the parties did not reside together or hold themselves out publicly as being married, the trial judge erred in determining that a marriage existed. *Freiburghaus v. Freiburghaus*, 103 Idaho 679, 651 P.2d 944 (Ct. App. 1982) (decision prior to 1995 amendment).

While a common-law marriage may be proven by testimony of a party to that relationship, the existence of such a common-law relationship may be negated by evidence that the parties held themselves out as single persons rather than as husband and wife. *Graham v. Larry Donohoe Logging*, 103 Idaho 824, 654 P.2d 1377 (1982) (decision prior to 1995 amendment).

No prima facie showing of common law marriage existed where woman alleging common law marriage and spousal interest in decedent's estate and decedent filed separate

tax returns, alleged spouse did not change her employment records, alleged spouse and decedent did not commingle funds and were separately responsible for household debts and did not consistently hold themselves out in the community to be married, which, taken together, failed to make proof that she and decedent assumed the rights, duties and obligations of marriage under §§ 32-301, 32-203 and this section. *Hall v. Becker*, 126 Idaho 848, 893 P.2d 211 (1995).

#### **Residents of Other States.**

Under Oregon law, woman was the surviving wife or widow of deceased workman for purposes of receiving death benefits under Longshoremen's and Harbor Workers' Act, where they had lived together as husband and wife from 1938 until his death in 1961, although the man's marriage to another woman was not formally dissolved until 1943; their relationship began in Idaho, which recognized nonceremonial marriages, and each year, following removal to Oregon in 1942, they returned to Idaho with their children to visit their parents, sufficiently confirming their marital relationship. *Albina Engine & Mach. Works v. O'Leary*, 328 F.2d 877 (9th Cir.), cert. denied, 379 U.S. 817, 85 S. Ct. 35, 13 L.Ed.2d 29 (1964) (decision prior to 1995 amendment).

A couple who lived together as husband and wife and held themselves out to be such in the state of Oregon, where common-law marriages are not recognized, did not establish a common-law marriage by registering and living as husband and wife on four vacation fishing trips of three to seven days each into Idaho. *In re Estate of Hildenbrand*, 243 Or. 117, 410 P.2d 244 (1966) (decision prior to 1995 amendment).

Where an unmarried couple residing in Oregon made numerous visits to Idaho for social and business purposes over a 12-year period, their contacts with Idaho were insufficient to constitute the basis of a common-law marriage under this section and § 32-203. *In re Wharton*, 55 Or. App. 564, 639 P.2d 652 (1982) (decision prior to 1995 amendment).

### **RESEARCH REFERENCES**

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, §§ 1 et seq., 36 et seq.

**C.J.S.** — 55 C.J.S., Marriage, § 2 et seq.

**32-202. Persons who may marry.** — Any unmarried male of the age of eighteen (18) years or older, and any unmarried female of the age of eighteen (18) years or older, and not otherwise disqualified, are capable of consenting to and consummating marriage. Provided that if the male party to the contract is under the age of eighteen (18) and not less than sixteen (16) years of age, or if the female party to the contract is under the age of eighteen (18) and not less than sixteen (16) years of age, the license shall not be issued



except upon the consent in writing duly acknowledged and sworn to by the father, mother or guardian of any such person if there be either, and provided further, that no such license may be issued, if the male be under eighteen (18) years of age and the female under eighteen (18) years of age, unless each party to the contract submits to the county recorder his or her original birth certificate, or certified copy thereof or other proof of age acceptable to the county recorder. Provided further, that where the female is under the age of sixteen (16), or the male is under the age of sixteen (16), the license shall not issue except upon the consent in writing duly acknowledged or sworn to by the father, mother or guardian of such person if there be any such, and upon order of the court. Such order shall be secured upon petition of any interested party which petition shall show that the female minor under the age of sixteen (16), or the male minor under the age of sixteen (16), is physically and/or mentally so far developed as to assume full marital and parental duties, and/or that it is to the best interest of society that the marriage be permitted. A hearing shall be had on such petition forthwith or at such time and upon such notice as the court may designate. The judge shall secure from a physician his opinion as an expert as to whether said person is sufficiently developed mentally and physically to assume full marital duties. If said court is satisfied from the evidence that such person is capable of assuming full marital duties and/or that it is to the best interest of society, said court shall make an order to that effect, and a certified copy of said order shall be filed with the county recorder preliminary to the issuance of a marriage license for the marriage of such person and said order of the court shall be the authority for the county recorder to issue such license. [1864, p. 613, § 2; R.S., § 2421; am. 1888-1889, p. 44; reen. R.C. & C.L., § 2612; C.S., § 4592; am. 1921, ch. 221, § 1, p. 492; I.C.A., § 31-202; am. 1943, ch. 50, § 1, p. 96; am. 1967, ch. 326, § 1, p. 955; am. 1969, ch. 90, § 1, p. 302; am. 1972, ch. 68, § 1, p. 138; am. 1981, ch. 295, § 1, p. 615.]

#### STATUTORY NOTES

**Cross References.** — Person officiating to ascertain age, § 32-302.

**Effective Dates.** — Section 2 of S.L. 1972,

ch. 68 provided the act should take effect on and after July 1, 1972.

#### JUDICIAL DECISIONS

**Cited in:** In re Estate of Gholson, 83 Idaho 270, 361 P.2d 791 (1961); State v. Bronson, 94 Idaho 306, 486 P.2d 1019 (1971); Miller v.

Mangus, 126 Idaho 876, 893 P.2d 823 (Ct. App. 1995).

#### RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, § 16 et seq.

**C.J.S.** — 55 C.J.S., Marriage, §§ 10-20.

**A.L.R.** — Marriage between persons of the same sex. 63 A.L.R.3d 1199.

Marriage between persons of the same sex. 81 A.L.R.5th 1.

Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination. 82 A.L.R.5th 1.

**32-203. Proof of consent and consummation. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 31-203, was repealed by S.L. 1995, ch. 104, comprised 1877, p. 25, § 3; R.S., § 2422; reen. § 2, effective January 1, 1996. R.C. & C.L., § 2613; C.S., § 4593; I.C.A.,

**32-204. Voidable marriages — Physical incapacity — Fraud or force. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 31-204, was repealed by S.L. 1995, ch. 104, comprised 1877, p. 24, § 4; R.S., § 2423; reen. § 2, effective January 1, 1996. R.C. & C.L., § 2614; C.S., § 4594; I.C.A.,

**32-205. Incestuous marriages.** — Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half (1/2) as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate. [1867, p. 71, § 2; R.S., § 2424; reen. R.C. & C.L., § 2615; C.S., § 4595; I.C.A., § 31-205.]

**STATUTORY NOTES**

**Cross References.** — Penalty for incestuous marriages, § 18-6602.

**JUDICIAL DECISIONS****Construction.**

Definition herein contained applies to § 18-6602, prescribing penalty for incest. *State v. Andrus*, 29 Idaho 1, 156 P. 421 (1916).

**RESEARCH REFERENCES**

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, §§ 51-54, 72. **C.J.S.** — 55 C.J.S., Marriage, § 17.

**32-206. Marriages between first cousins.** — All marriages between first cousins are prohibited. [1867, p. 71, § 3; R.S., § 2425; reen. R.C. & C.L., § 2616; C.S., § 4596; am. 1921, ch. 115, § 1, p. 291; I.C.A., § 31-206; am. 1959, ch. 44, § 1, p. 89.]

**32-207. Polygamous marriages.** — A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning unless:

1. The former marriage of either party has been annulled or dissolved; or,

2. Such former husband or wife was absent and not known to such person to be living for the space of five (5) successive years immediately preceding, or was generally reputed, and was believed by such person, to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal. [1877, p. 24, § 6; R.S., § 2426; am. 1903, p. 10, § 1; reen. R.C. & C.L., § 2617; C.S., § 4597; I.C.A., § 31-207; am. 1943, ch. 25, § 1, p. 53.]

### STATUTORY NOTES

**Cross References.** — Annulment of marriage, §§ 32-501 — 32-505.

Penalty for bigamy, § 18-1103.

### JUDICIAL DECISIONS

#### ANALYSIS

Allegations.

Collateral attack.

Presumption of marriage.

#### Allegations.

Complaint must allege, in order to state an offense under the laws of this state, that the other party charged to have contracted a subsequent marriage is not the former husband or wife of divorced person so subsequently married. *State v. Cole*, 31 Idaho 603, 174 P. 131 (1918).

#### Collateral Attack.

Where widow of deceased obtained a divorce decree in state against a former husband, brothers and sisters of deceased who were neither parties to nor in privity with any of the parties to the divorce action had no standing to attack collaterally such decree. *Bair v. Bair*, 91 Idaho 30, 415 P.2d 673 (1966).

#### Presumption of Marriage.

Where the original cohabitation was preceded by a ceremonial marriage which was

void because one of the parties was already married, the continuance of the cohabitation after the removal of the impediment by death of the former husband or wife, in connection with circumstances tending to show that the parties regarded their relations as of a matrimonial character, and held themselves out as husband and wife, creates a presumption of marriage, although there is no evidence of another ceremony. *Nicholas v. Idaho Power Co.*, 63 Idaho 675, 125 P.2d 321 (1942).

Where husband married his first wife in China in 1915 and his second wife in California in 1937, evidence that divorce is uncommon in China and that plural marriages are acceptable under Chinese law was not sufficient to overcome the presumptions that the second marriage was valid and that the prior marriage had been terminated. *Estate of Yee*, 98 Idaho 147, 559 P.2d 763 (1977).

### RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, § 55 et seq.

**C.J.S.** — 55 C.J.S., Marriage, § 18.

**A.L.R.** — Concealment of or misrepresentation as to prior marital status as ground for annulment of marriage. 15 A.L.R.3d 759.

**32-208. Release from contract for unchastity.** — Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. [R.S., § 2427; reen R.C. & C.L., § 2618; C.S., § 4598; I.C.A., § 31-208.]

**32-209. Recognition of foreign or out-of-state marriages.** — All marriages contracted without this state, which would be valid by the laws of the state or country in which the same were contracted, are valid in this



state, unless they violate the public policy of this state. Marriages that violate the public policy of this state include, but are not limited to, same-sex marriages, and marriages entered into under the laws of another state or country with the intent to evade the prohibitions of the marriage laws of this state. [1867, p. 71, § 5; R.S., § 2428; reen. R.C. & C.L., § 2619; C.S., § 4599; I.C.A., § 31-209; am. 1996, ch. 331, § 1, p. 1126.]

### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1996, ch. 331 declared an emergency. Approved March 18, 1996.

### JUDICIAL DECISIONS

#### ANALYSIS

Foreign law, compliance.  
Judicial determination of validity.  
Marriage void where consummated.

#### Foreign Law, Compliance.

A claimant did not fail to establish her status as an employee's "widow" entitled to workmen's compensation because consensual marriage was consummated in Montana without recording joint declaration of marriage as required by Montana directory statutes. *Morrison v. Sunshine Mining Co.*, 64 Idaho 6, 127 P.2d 766 (1942).

#### Judicial Determination of Validity.

Where courts of the state of Utah found that marriage consummated in that state was

valid, such decree was binding on the courts of Idaho. *Hilton v. Stewart*, 15 Idaho 150, 96 P. 579 (1908).

#### Marriage Void Where Consummated.

When marriage consummated in Indiana was void by reason of prior undissolved marriage, such marriage was void in Idaho. *Huff v. Huff*, 20 Idaho 450, 118 P. 1080 (1911).

### RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, § 62 et seq.

**C.J.S.** — 55 C.J.S., Marriage, § 6.

**A.L.R.** — Recognition by foreign state of

marriage which, though invalid where contracted, would have been valid if contracted within foreign state. 82 A.L.R.3d 1240.

## CHAPTER 3

### SOLEMNIZATION OF MARRIAGE

#### SECTION.

- 32-301. How solemnized.
- 32-302. Duty of person officiating.
- 32-303. By whom solemnized.
- 32-304. Form of ceremony.
- 32-305. Examination of witnesses.
- 32-306. Certificate to parties.

#### SECTION.

- 32-307. Fees of officer.
- 32-308. Validity not affected by want of authority.
- 32-309. Marriage certificate as evidence.
- 32-310, 32-311. [Repealed.]

**32-301. How solemnized.** — All marriages shall be solemnized, authenticated and recorded as provided in this chapter. On and after January 1, 1996, any marriage contracted or entered into in violation of the provisions of this title shall be void. [1877, p. 24, § 8; R.S., § 2425; reen. R.C. & C.L., § 2620; C.S., § 4600; I.C.A., § 31-301; am. 1995, ch. 104, § 4, p. 334.]

## STATUTORY NOTES

**Cross References.** — Registration of marriages, § 39-262.

**Legislative Intent.** — Section 1 of S.L. 1995, ch. 111 read: "It is the intent of this act to promote the stability and best interests of marriage and the family. Marriage is the

institution that is the foundation of the family and of society. Its stability is basic to morality and civilization and of vital interest to society and the state. Common-law marriages entered into in this state on and after January 1, 1996, will no longer be recognized."

## JUDICIAL DECISIONS

### ANALYSIS

Common law marriages.

In general.

Nonresidents.

Presumption of marriage.

### Common law Marriages.

Common-law marriage recognized in Idaho, *Dawson v. United States*, 10 F.2d 106 (9th Cir.), cert. denied, 271 U.S. 687, 46 S. Ct. 638, 70 L.Ed. 1152 (1926) (decision prior to 1995 amendment).

Where, after death of former spouse, a couple recognize their union as husband and wife and enter upon the marriage relation and children are born to them thereafter, such relationship develops into a common-law marriage. *Huff v. Huff*, 20 Idaho 450, 118 P. 1080 (1911) (decision prior to 1995 amendment).

In contrast with other jurisdictions, Idaho has never viewed the doctrine of common-law marriage with disfavor. Together with a small number of other states, Idaho permits a non-ceremonial marriage to be proven by a preponderance of the evidence. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

A desire for a ceremonial marriage does not necessarily preclude the existence of a common-law marriage. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

Where the testimony indicated that the parties lived together, assumed marital rights and duties, including the conception and birth of a son, and that they held themselves out as husband and wife, beginning in June, 1967, the trial court's finding that the marriage relationship began in June, 1970 on the date of the ceremonial marriage was not supported by substantial evidence. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983) (decision prior to 1995 amendment).

No prima facie showing of common law marriage existed where woman alleging common law marriage and spousal interest in decedent's estate and decedent filed separate tax returns, alleged spouse did not change her

employment records, alleged spouse and decedent did not commingle funds and were separately responsible for household debts and did not consistently hold themselves out in the community to be married, which, taken together, failed to show that she and decedent assumed the rights, duties and obligations of marriage under §§ 32-201, 32-203, and this section. *Hall v. Becker*, 126 Idaho 848, 893 P.2d 211 (1995).

### In General.

There are two forms of marriage authorized in this state. One is a marriage that is solemnized by a person authorized to perform marriages, witnessed, authenticated, with a certificate recorded, as provided by §§ 32-301 through 32-309; the other is a common-law marriage. *Freiburghaus v. Freiburghaus*, 103 Idaho 679, 651 P.2d 944 (Ct. App. 1982) (decision prior to 1995 amendment).

### Nonresidents.

A couple who lived together as husband and wife and held themselves out to be such in the state of Oregon, where common-law marriages are not recognized, did not establish a common-law marriage by registering and living as husband and wife on four vacation fishing trips of three to seven days each into Idaho. *In re Estate of Hildenbrand*, 243 Or. 117, 410 P.2d 244 (1996) (decision prior to 1995 amendment).

### Presumption of Marriage.

Where there was clear evidence of cohabitation, of assumption of the rights, duties and responsibilities of marriage and that the partners held themselves out to the community as husband and wife, the presumption of marriage was established, including the element of consent. *Metropolitan Life Ins. Co. v. Johnson*, 103 Idaho 122, 645 P.2d 356 (1982) (decision prior to 1995 amendment).

**Cited in:** *Dire v. Dire-Blodgett*, 140 Idaho 777, 102 P.3d 1096 (2004).

## RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, § 29 et seq.

**C.J.S.** — 55 C.J.S., Marriage, § 30 et seq.

**A.L.R.** — Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**32-302. Duty of person officiating.** — All persons herein authorized to solemnize marriages must first require the presentation of the marriage license and must ascertain and be assured of:

1. The identity of the parties.
2. Their real and full names and places of residence.
3. That they are of sufficient age to be capable of contracting marriage.
4. If either the male or the female is under the age of eighteen (18), the consent of the father, mother or guardian, if any such, is given, or that such underaged person has been previously but is not at the time married; and that the parties applying for the rites of marriage, and making such contract, have a legal right so to do. [1877, p. 24, § 9; R.S., § 2430; am. 1888-1889, p. 44; reen. R.C. & C.L., § 2621; C.S., § 4601; I.C.A., § 31-302; am. 1995, ch. 104, § 5, p. 334.]

## STATUTORY NOTES

**Cross References.** — Nonage, consent of parent or guardian to issuance of license, § 32-202.

**Effective Dates.** — Section 6 of S.L. 1995, ch. 104 provided that the act should be in full force and effect on and after January 1, 1996.

## JUDICIAL DECISIONS

**Requirements.**

Because parties intentionally chose not to obtain a marriage license their purported marriage violated state law, and summary judgment was properly awarded to defendant

in plaintiff's action for divorce; license and solemnization are required for a valid marriage. *Dire v. Dire-Blodgett*, 140 Idaho 777, 102 P.3d 1096 (2004).

## RESEARCH REFERENCES

**A.L.R.** — Marriage between persons of same sex — United States and Canadian cases. 1 A.L.R. Fed. 2d 1.

**32-303. By whom solemnized.** — Marriage may be solemnized by either a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, any federal judge, the current or a former governor, lieutenant governor, a current or retired magistrate of the district court, mayor, priest or minister of the gospel of any denomination. To be a retired justice of the supreme court, court of appeals judge, district judge or magistrate judge of the district court, for the purpose of solemnizing marriages, a person shall have served in one (1) of those offices and shall be receiving a retirement benefit from either the judges retirement system or the public employee retirement system for service in the judiciary. [1864, p. 613, § 4; R.S., § 2431; reen. R.C. & C.L., § 2622; C.S., § 4602; I.C.A., § 31-303; am. 1969, ch. 116, § 1, p. 374; am. 1983, ch. 18, § 3, p. 52; am. 1994, ch. 7, § 1, p. 11; am. 1997, ch. 196, § 1, p. 554; am. 2000, ch. 212, § 1, p. 572.]



## . STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1969, ch. 116 provided that the act should be effective at 12:01 A.M. on January 11, 1971.

Section 2 of S.L. 1997, ch. 196 declared an emergency. Approved March 19, 1997.

## JUDICIAL DECISIONS

**Cited in:** Metropolitan Life Ins. Co. v. Johnson, 103 Idaho 122, 645 P.2d 356 (1982).

## RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, §§ 33, 34.

**C.J.S.** — 55 C.J.S., Marriage, §§ 30-34.

**A.L.R.** — Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**32-304. Form of ceremony.** — No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage that they take each other as husband and wife. [1864, p. 614, § 6; R.S., § 2432; reen. R.C. & C.L., § 2623; C.S., § 4603; I.C.A., § 31-304.]

**32-305. Examination of witnesses.** — The person solemnizing the marriage may administer oaths and examine the parties and witnesses for the purpose of satisfying himself that the contracting parties are qualified under the requirements of this chapter. [1877, p. 24, § 11; R.S., § 2433; reen. R.C. & C.L., § 2624; C.S., § 4604; I.C.A., § 31-305.]

## STATUTORY NOTES

**Cross References.** — Persons who may marry, § 32-202.

**32-306. Certificate to parties.** — When a marriage has been solemnized the person solemnizing the same must give to each of the parties, if required, a certificate thereof. [1864, p. 614, § 7; R.S., § 2436; reen. R.C. & C.L., § 2625; C.S., § 4605; I.C.A., § 31-306.]

**32-307. Fees of officer.** — The person solemnizing a marriage is for such service entitled to receive from the parties married the sum of five dollars (\$5.00), but may receive any other or greater sum voluntarily given by the parties to such marriage. [1877, p. 24, § 16; R.S., § 2438; reen. R.C. & C.L., § 2626; C.S., § 4606; I.C.A., § 31-307.]

## STATUTORY NOTES

**Cross References.** — Fee of recorder for issuing, filing, recording and indexing certificate of marriage, § 31-3205.

## JUDICIAL DECISIONS

**Disposition of Fees and Gratuities.**

Fees received by probate judge for solemnizing marriages must be turned into county treasury, but any gratuities given him by the parties over and above amount of the legal fee

may be retained for his individual use. *Rhea v. Board of County Comm'rs*, 12 Idaho 455, 88 P. 89 (1907); *Rhea v. Board of County Comm'rs*, 13 Idaho 59, 88 P. 89 (1907).

**32-308. Validity not affected by want of authority.** — No marriage solemnized by any person professing to be a judge, justice, or minister, is deemed or regarded void, nor is the validity thereof to be in any way affected on account of any want of jurisdiction or authority: provided, it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. [1864, p. 615, § 13; R.S., § 2439; reen. R.C. & C.L., § 2627; C.S., § 4607; I.C.A., § 31-308.]

## RESEARCH REFERENCES

**A.L.R.** — Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**32-309. Marriage certificate as evidence.** — The original certificate, and record of marriage made by the judge, justice or minister, as prescribed in this chapter, and the record thereof by the recorder of the county, or a copy of such record duly certified by such recorder, must be received in all courts and places as presumptive evidence of the fact of such marriage. [1864, p. 615, § 14; R.S., § 2440; am. 1888-1889, p. 40, § 1; am. R.C. & C.L., § 2628; C.S. § 4608; I.C.A., § 31-309.]

## STATUTORY NOTES

**Cross References.** — Marriage books and certified copies of entries as evidence, § 32-409.

**32-310, 32-311. Copies of marriage certificate — Filing. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised S.L. 1947, ch. 94, §§ 4, 5, were repealed by S.L. 1949, ch. 72, § 34.

## CHAPTER 4

## MARRIAGE LICENSES, CERTIFICATES, AND RECORDS

## SECTION.

32-401. Marriage license — Contents.

32-402. Certificate and return.

32-403. Application for and issuance of license.

32-404. Administration of oaths.

## SECTION.

32-405. Minister or officer may solemnize marriage.

32-406. Solemnization without license — Penalty.

32-407. Record of return of license.

SECTION.

- 32-408. Fees for issuing license.
- 32-409. Marriage books as evidence.
- 32-410. Penalty for false return.
- 32-411. Disposition of penalties.
- 32-412. [Null and void.]
- 32-412A. Educational pamphlet and self administered confidential risk

SECTION.

- appraisal on possible AIDS exposure.
- 32-413. Form of medical certificate.
- 32-414. [Repealed.]
- 32-415. Violations a misdemeanor.
- 32-416, 32-417. [Renumbered.]
- 32-418, 32-419. [Repealed.]

**32-401. Marriage license — Contents.** — The county recorder of any county in this state shall have authority to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which licenses shall be substantially in the following form:

Know all men by this certificate that any regularly ordained minister of the gospel, authorized by the rites and usages of the church or denomination of Christians, Hebrews, or religious body of which he may be a member, or any judge or justice of the peace or competent officer to whom this may come, he not knowing of any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between ..., of ... of the county of ..., and the state of ..., and ..., of ... of the county of ..., state of ..., and to certify the same to said parties, or either of them, under his hand and seal, in his ministerial or official capacity, and thereupon he is required to return his certificate in form following as hereto annexed.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at ..., this ... day of ..., ..... Recorder.

[1895, p. 166, § 1; reen. 1899, p. 278, § 1; am. R.C. & C.L., § 2629; C.S., § 4609; I.C.A., § 31-401; am. 2002, ch. 32, § 11, p. 46.]

STATUTORY NOTES

**Cross References.** — Certificates of marriage and marriage contracts to be recorded by county recorder, § 31-2402; index, § 31-2404.

Certificate of marriage, forwarded to state registrar by recorder, § 39-262.  
Domestic violence project grants, §§ 39-5201 — 39-5213.

RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, §§ 30-32.      **C.J.S.** — 55 C.J.S., Marriage, §§ 27-29.

**32-402. Certificate and return.** — The form of certificate annexed to said license, and therein referred to, shall be as follows:

I, ..., a ..., residing at ..., in the county of ..., in the state of Idaho, do certify that, in accordance with the authority on me conferred by the above license, I did on this .... day of ..., in the year ..., at ..., in the county of ..., in the state of Idaho, solemnize the rights of matrimony between ..., of ..., in the county of ..., of the state of ..., and ..., of ..., of the county of ..., of the state of ..., in the presence of .... and ....



Witness my hand and seal at the county aforesaid, this .... day of  
..., ..  
In the presence of ..... [Seal]  
.....

The license and certificate, duly executed by the minister or officer who shall have solemnized the marriage authorized, shall be returned by him to the office of the recorder who issued the same, within thirty (30) days from the date of solemnizing the marriage therein authorized; and a neglect to make such return shall be deemed a misdemeanor, and the person whose duty it shall be to make such return, who shall neglect to make such return within the time above specified, shall, upon conviction thereof, be punished by a fine of not less than twenty dollars (\$20.00) nor more than fifty dollars (\$50.00) to be assessed by any justice of the peace or other court having jurisdiction. [1895, p. 166, § 2; reen. 1899, p. 278, § 2; reen. R.C. & C.L., § 2630; C.S., § 4610; I.C.A., § 31-402; am. 2002, ch. 32, § 12, p. 46.]

STATUTORY NOTES

<b>Cross References.</b> — Certificate pre-	and indexing certificate of marriage, § 31-
sumptive evidence of marriage, § 32-309.	3205.
Disposition of fines, § 19-4705.	Penalty for misdemeanor when not other-
Fee of county recorder for filing, recording	wise provided, § 18-113.

RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Marriage, § 35.  
**C.J.S.** — 55 C.J.S., Marriage, § 35.

**32-403. Application for and issuance of license.** — (1) Every county recorder who shall have personal knowledge of the competency of the parties for whose marriage a license is applied for, shall issue such license upon payment or tender to him of his legal fee therefor; and if such recorder does not know of his own knowledge that the parties are competent under the laws of the state to contract matrimony, he shall take the affidavit in writing of the person or persons applying for such license, and of other persons as he may see proper, and of any persons whose testimony may be offered; and if it appears from the affidavit so taken that the parties for whose marriage the license in question is demanded are legally competent to marry, the recorder shall issue such license, and the affidavits so taken shall be his warrant against any fine or forfeiture for issuing such license. Provided, however, that in the event either of the parties for whose marriage the license in question is applied for is under the age of eighteen (18) years, the recorder shall not issue such license except upon compliance with the consent and proof of age requirements set forth in section 32-202, Idaho Code.

(2) Every application for a marriage license shall include the social security numbers of the parties applying for the license.

(a) The requirement that an applicant provide a social security number shall apply only to applicants who have been assigned a social security number.

(b) An applicant who has not been assigned a social security number shall:

- (i) Present written verification from the social security administration that the applicant has not been assigned a social security number; and
- (ii) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and
- (iii) Submit such proof as the department may require that the applicant is lawfully present in the United States. [1895, p. 166, § 3; reen. 1899, p. 278, § 3; reen. R.C. & C.L., § 2631; C.S., § 4611; am. 1931, ch. 149, § 1, p. 251; I.C.A., § 31-403; am. 1933, ch. 8, § 1, p. 8; am. 1967, ch. 326, § 2, p. 955; am. 1972, ch. 49, § 1, p. 88; am. 1982, ch. 356, § 1, p. 904; am. 1998, ch. 248, § 1, p. 809; am. 1999, ch. 334, § 1, p. 909.]

#### STATUTORY NOTES

**Effective Dates.** — Section 2 of S.L. 1982, ch. 356 declared an emergency. Approved April 2, 1982.

Section 2 of S.L. 1972, ch. 49 provided the

act should take effect on and after July 1, 1972.

Section 3 of S.L. 1999, ch. 334 declared an emergency. Approved March 24, 1999.

#### JUDICIAL DECISIONS

##### **Purpose of Statute.**

The purpose of this statute is to guard against collusion between the parties to have the marriage contract dissolved. *Bess v. Bess*,

58 Idaho 259, 72 P.2d 285 (1937).

**Cited in:** *State v. Thomas*, 82 Idaho 473, 355 P.2d 674 (1960).

**32-404. Administration of oaths.** — The county recorder shall have power to administer all oaths required or provided for in this chapter, and if any person in any such affidavit shall wilfully and corruptly swear falsely to any material fact as to the competency of any person for whose marriage the license in question refers, or concerning the procuring or issuing of which such affidavit may be made, shall be guilty of perjury, and, upon conviction thereof, shall be punished as provided by statute in other cases of perjury. [1895, p. 166, § 4; reen. 1899, p. 278, § 4; reen. R.C. & C.L., § 2632; C.S., § 4612; I.C.A., § 31-404.]

#### STATUTORY NOTES

**Cross References.** — Punishment for perjury, § 18-5409.

#### JUDICIAL DECISIONS

##### **Perjury.**

Information charging defendant with perjury in connection with his application for a marriage license was fatally defective and properly dismissed because it failed to name officer before whom oath was taken and did

not allege authority of officer to administer the oath as required by § 19-1426, and did not allege that false statement was made in written affidavit sworn to before the county recorder as required by this section. *State v. Thomas*, 82 Idaho 473, 355 P.2d 674 (1960).

**32-405. Minister or officer may solemnize marriage.** — Any authorized minister or officer to whom any such license, duly issued, may come,

not having personal knowledge of the incompetency of either party therein named to contract matrimony, may lawfully solemnize matrimony between them. [1895, p. 166, § 5; reen. 1899, p. 278, § 5; reen. R.C. & C.L., § 2633; C.S., § 4613; I.C.A., § 31-405.]

#### RESEARCH REFERENCES

**A.L.R.** — Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**32-406. Solemnization without license — Penalty.** — If any such minister or officer shall presume to solemnize any marriage between parties without such a license, or with knowledge that either party is legally incompetent to contract matrimony as is provided for by the laws of this state, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than \$200.00 before any court having jurisdiction. [1895, p. 166, § 6; reen. 1899, p. 278, § 6; reen. R.C. & C.L., § 2634; C.S., § 4614; I.C.A., § 31-406.]

**32-407. Record of return of license.** — The recorder shall record all such returns of marriage licenses in a book to be kept for that purpose, within one (1) month after receiving the same. If any recorder shall neglect or refuse to record within the said time any return to him made, he shall forfeit \$100.00, to be recovered, with costs, by any person who will prosecute for the same. [1895, p. 166, § 7; reen. 1899, p. 278, § 7; reen. R.C. & C.L., § 2635; C.S., § 4615; I.C.A., § 31-407.]

#### STATUTORY NOTES

**Cross References.** — State registrar, forward of license to by recorder, § 39-262.

**32-408. Fees for issuing license.** — The recorder of each county of this state shall be entitled to a fee as provided by section 31-3205, Idaho Code, for each license issued, which fee he shall demand and receive from the person applying for the same, and he may refuse to issue any such license until such fee is paid to him. Said fee shall include the payment for the service of taking affidavit, filing affidavit and recording the license upon its return from the minister or officer solemnizing the marriage for which it was issued. [1895, p. 166, § 8; reen. 1899, p. 278, § 8; reen. R.C., § 2636; am. 1911, ch. 137, § 1, p. 430; reen. C.L., § 2636; C.S., § 4616; I.C.A., § 31-408; am. 1965, ch. 133, § 1, p. 261; am. 1984, ch. 29, § 2, p. 50.]

#### STATUTORY NOTES

**Cross References.** — Fee of county recorder for issuing marriage license, § 31-3205.



**32-409. Marriage books as evidence.** — The books of marriages and copies of entries therein, certified by the recorder under his official seal, shall be evidence in all courts. [1867, p. 71, § 10; 1895, p. 166, § 9; reen. 1899, p. 278, § 9; reen. R.C. & C.L., § 2637; C.S., § 4617; I.C.A., § 31-409.]

#### STATUTORY NOTES

**Cross References.** — Marriage certificate presumptive evidence, § 32-309.

**32-410. Penalty for false return.** — If any person, authorized to solemnize marriage, shall wilfully make a false return of any marriage or pretended marriage to the recorder; or, if the recorder shall wilfully record a false return of any marriage, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$100.00, and by imprisonment for not less than three (3) months. [1895, p. 166, § 10; reen. 1899, p. 278, § 10; reen. R.C. & C.L., § 2638; C.S., § 4618; I.C.A., § 31-410.]

**32-411. Disposition of penalties.** — All fines and penalties accruing under the provisions of this chapter shall be paid into the county treasury for the use of the common schools in the county where the offense was committed. [1895, p. 166, § 11; reen. 1899, p. 278, § 11; reen. R.C. & C.L., § 2639; C.S., § 4619; I.C.A., § 31-411.]

#### STATUTORY NOTES

**Compiler's Notes.** — The disposition of fines provided in this section is superseded by § 19-4705, effective January 11, 1971, which provides, in part, that "Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such law is inconsistent with the provisions of this act except as provided in section 49-1013(3)."

**32-412. Medical certificate required.** [Null and void as of June 30, 1988.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 2 of S.L. 1980, ch. 119 as amended by § 2 of S.L. 1985, ch. 51 read: "Section 34-412, Idaho Code, shall become null and void after June 30, 1988, unless reenacted by the Idaho legislature."

**32-412A. Educational pamphlet and self administered confidential risk appraisal on possible AIDS exposure.** — Before any county recorder may issue a marriage license, each male and female applicant therefor shall be provided with a confidential AIDS educational pamphlet prepared by the state department of health and welfare and provided to the county recorder by the department of health and welfare. The educational pamphlet shall contain information describing how AIDS can be contracted, what some of the symptoms of the disease are, what the effects of the disease are, and what can be done to prevent exposure to the disease.

Each applicant shall certify to the county recorder that he or she has read the educational pamphlet or has had the educational pamphlet read to them.

The confidential questionnaire shall be designed so that an answer to the various questions will indicate to the marriage license applicant his or her potential past exposure to situations, conditions; or procedures that are medically known to have caused AIDS.

The questionnaire shall state that the results of the questionnaire are confidential to the applicant, but that if any of the answers indicate that he or she is in the general population at risk for developing AIDS, he or she should contact a physician, or the district health department, or the state department of health and welfare. [I.C., § 32-412A, as added by 1988, ch. 150, § 1, p. 270.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-412A which comprised I.C. § 32-412A, as added by 1978, ch. 63, § 1, was repealed by S.L. 1979, ch. 57, § 1.

**32-413. Form of medical certificate.** — The certificate, referred to in section 32-412, Idaho Code, shall be made upon the certificate form to be provided by the department of health and welfare. [1943, ch. 42, § 2, p. 83; am. 1979, ch. 57, § 3, p. 150.]

#### STATUTORY NOTES

**Compiler's Notes.** — Section 32-412 referred to in this section became null and void June 30, 1988. As enacted the section heading of this section read, "Contents of medical certificate."

**32-414. District court judge may waive requirements as to three day waiting period or medical certificate. [Repealed.]**

#### STATUTORY NOTES

**Prior Laws.** — Another former § 32-414 which comprised S.L. 1943, ch. 42, § 3, p. 83; am. 1970, ch. 25, § 1, p. 52, was repealed by S.L. 1979, ch. 57, § 1. comprised 1943, ch. 42, § 5, p. 83; am. 1969, ch. 90, § 2, p. 302; am. 1979, ch. 57, § 4, p. 150, was repealed by S.L. 2000, ch. 71, § 1, effective July 1, 2000.

**Compiler's Notes.** — This section, which

**32-415. Violations a misdemeanor.** — Any person who misrepresents any fact required to be stated on the certificate form or other form required by this act, or any licensing officer who issues a marriage license without having received the certificate forms or an order from the court as provided by this chapter, or who has reason to believe that any of the facts thereon have been so misrepresented, and shall nevertheless issue a marriage license, or any person who otherwise fails to comply with the provisions of this act shall be guilty of a misdemeanor. [1943, ch. 42, § 6, p. 83; am. 1979, ch. 57, § 5, p. 150.]

### STATUTORY NOTES

**Cross References.** — Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.** — Former § 32-415 which

comprised S.L. 1943, ch. 42, § 4, p. 83, was repealed by S.L. 1979, ch. 57, § 1.

**Compiler's Notes.** — This section was formerly compiled as § 32-417.

### 32-416, 32-417. Waiver of requirements — Violations. [Amended and redesignated.]

### STATUTORY NOTES

**Compiler's Notes.** — Sections 4 and 5 of S.L. 1979, ch. 57, amended and redesignated these sections as §§ 32-414 and 32-415.

### 32-418, 32-419. Forwarding, form of marriage certificates. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.** — These sections, which comprised S.L. 1947, ch. 94, §§ 6, 8, were repealed by S.L. 1949, ch. 72, § 34.

## CHAPTER 5

### ANNULMENT OF MARRIAGE

#### SECTION.

32-501. Grounds of annulment.

32-502. Action to annul — Parties and limitations.

32-503. Legitimacy of children.

#### SECTION.

32-504. Custody of children.

32-505. Conclusiveness of judgment.

32-506. [Repealed.]

**32-501. Grounds of annulment.** — A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabits with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears



to be incurable. [1875, p. 639, § 4; R.S., § 2450; reen. R.C. & C.L., § 2640; C.S., § 4620; I.C.A., § 31-501.]

### STATUTORY NOTES

**Cross References.** — First cousins, marriage between prohibited, § 32-206.

Grounds for divorce, § 32-603 et seq.

Incestuous marriages void, § 32-205.

Miscegenation prohibited, § 32-206.

Polygamous marriages illegal and void, exception, § 32-207.

Who may marry, age limits, § 32-202.

### JUDICIAL DECISIONS

#### ANALYSIS

Consent of parents.

Impotency.

Social security benefits.

#### Consent of Parents.

A mother was not entitled to annulment in the courts of Montana of the Idaho marriage of her son on the ground he was not of statutory age when married, where there was actual consent on her part to the son's marriage, notwithstanding there was no written acknowledged consent. *Cross v. Cross*, 110 Mont. 300, 102 P.2d 829 (1940).

The requirement of written and acknowledged consent has been held in cases considering similar statutes to be applicable only to the issuance of the license, and simply directory to the officer who issues the license, and the lack of such written and acknowledged consent does not affect the validity of the marriage. *Cross v. Cross*, 110 Mont. 300, 102 P.2d 829 (1940).

In a suit by a mother in the courts of Montana to annul an Idaho marriage of her son on the ground that he was not of statutory age when married, conflicting evidence supported a finding that the mother actually consented to the subsequent marriage of her

son. *Cross v. Cross*, 110 Mont. 300, 102 P.2d 829 (1940).

A parent's verbal consent to marriage by a minor child will prevent obtaining an annulment thereafter. *Cross v. Cross*, 110 Mont. 300, 102 P.2d 829 (1940).

#### Impotency.

In a divorce suit in which the wife counterclaimed for annulment on grounds of the husband's impotency, but there was no evidence that the alleged incapacity of the husband continued or that such incapacity was incurable, the trial court properly dismissed the counterclaim. *Ferguson v. Ferguson*, 91 Idaho 33, 415 P.2d 676 (1966).

#### Social Security Benefits.

If 16 year old daughter marries without consent of mother, payment of social security benefits to mother and daughter, which terminated on date of marriage, was subject to reinstatement effective on date of decree annulling marriage. *Mays v. Folsom*, 143 F. Supp. 784 (D. Idaho 1956).

### RESEARCH REFERENCES

**Am. Jur.** — 4 Am. Jur. 2d, Annulment of Marriage, § 1 et seq.

**C.J.S.** — 55 C.J.S., Marriage, § 63 et seq.

**A.L.R.** — Concealment of or misrepresentation as to prior marital status as ground for annulment of marriage. 15 A.L.R.3d 759.

Concealment or misrepresentation relating to religion as ground for annulment. 44 A.L.R.3d 972.

What constitutes mistake in the identity of one of the parties to warrant annulment of

marriage. 50 A.L.R.3d 1295.

Incapacity for sexual intercourse as ground for annulment. 52 A.L.R.3d 589.

Spouse's secret intention not to abide by written antenuptial agreement relating to financial matters as ground for annulment. 66 A.L.R.3d 1282.

Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**32-502. Action to annul — Parties and limitations.** — An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding

section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four (4) years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent;
2. For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife;
3. For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
4. For causes mentioned in subdivision four; by the party injured, within four (4) years after the discovery of the facts constituting the fraud;
5. For causes mentioned in subdivision five; by the injured party, within four (4) years after the marriage;
6. For causes mentioned in subdivision six; by the injured party, within four (4) years after the marriage. [R.S., § 2451; reen. R.C. & C.L., § 2641; C.S., § 4621; I.C.A., § 31-502.]

### JUDICIAL DECISIONS

#### Social Security Benefits.

If 16 year old daughter marries without consent of mother, payment of social security benefits to mother and daughter, which ter-

minated on date of marriage, was subject to reinstatement effective on date of decree annulling marriage. *Mays v. Folsom*, 143 F. Supp. 784 (D. Idaho 1956).

**32-503. Legitimacy of children.** — When a marriage [marriage] is annulled for any reason, other than for fraud in that the wife is pregnant with the child of a man other than the husband, children begotten before judgment are legitimate and succeed to the state [estate] of both parents. The court may at the time of granting the annulment or at any future time, make necessary orders for the support of said child or children as the circumstances and surroundings of the parents may require. [R.S., § 2452; reen. R.C. & C.L., § 2642; C.S., § 4622; I.C.A., § 31-503; am. 1955, ch. 261, § 1, p. 629.]

### STATUTORY NOTES

**Cross References.** — Intestate succession, illegitimate children, § 15-2-109.

**Compiler's Notes.** — The bracketed words "marriage" and "estate" in the first

sentence were inserted by the compiler.

**Effective Dates.** — Section 2 of S.L. 1955, ch. 261 declared an emergency. Approved March 16, 1955.

### RESEARCH REFERENCES

**A.L.R.** — Presumption of legitimacy of child born after annulment, divorce, or separation. 46 A.L.R.3d 158.

Effect in subsequent proceedings, of pater-

nity findings or implications in divorce or annulment decree or in support or custody made incident thereto. 78 A.L.R.3d 846.

**32-504. Custody of children.** — The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party. [R.S., § 2453; reen. R.C. & C.L., § 2643; C.S., § 4623; I.C.A., § 31-504.]

#### STATUTORY NOTES

**Cross References.** — Divorce, custody of children pending or upon, § 32-717. Separation without divorce, custody of children, § 32-1005.

#### RESEARCH REFERENCES

**A.L.R.** — Power of court which denied divorce, legal separation, or annulment, to award custody or make provisions for support of child. 7 A.L.R.3d 1096.

**32-505. Conclusiveness of judgment.** — A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them. [R.S., § 2454; reen. R.C. & C.L., § 2644; C.S., § 4624; I.C.A., § 31-505.]

#### JUDICIAL DECISIONS

##### ANALYSIS

Full faith and credit.  
Legislative powers.  
Section does not limit new actions.

##### Full Faith and Credit.

To allow the extraterritorial application of this section to the Utah decree of annulment of divorce clearly would do violence to the full faith and credit clause of the federal constitution. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

##### Legislative Powers.

The legislature of each state has the power to control and to regulate marriages within its jurisdiction. This includes the power to regulate the qualifications of the contracting parties and the proceedings essential to consti-

tute a marriage. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

##### Section Does Not Limit New Actions.

The statute which provides that a judgment of nullity of a marriage rendered is conclusive only as against the parties thereto or claiming under them, could not be invoked to prevent a wife of a deceased first husband from obtaining benefit rights after a second marriage was annulled because the second husband had an undivorced wife at the time of marriage. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

**32-506. Filing of copy of divorce, annulment decrees. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised S.L. 1947, ch. 94, § 7, was repealed by S.L. 1949, ch. 72, § 34.



## CHAPTER 6

## DIVORCE — GROUNDS AND DEFENSES

## SECTION.

- 32-601. Dissolution of marriage.
- 32-602. Effect of decree.
- 32-603. Causes for divorce.
- 32-604. Adultery.
- 32-605. Extreme cruelty.
- 32-606. Wilful desertion.
- 32-607. Wilful neglect.
- 32-608. Habitual intemperance.

## SECTION.

- 32-609. Continuation of cause.
- 32-610. Separation without cohabitation.
- 32-611. Denial of divorce.
- 32-612. Collusion.
- 32-613. Recrimination.
- 32-614. Condonation.
- 32-615. Limitations.
- 32-616. Irreconcilable differences.

**32-601. Dissolution of marriage.** — Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. [R.S., § 2455; reen. R.C. & C.L., § 2645; C.S., § 4625; I.C.A., § 31-601.]

## STATUTORY NOTES

**Cross References.** — Domestic violence project grants, §§ 39-5201 — 39-5213.

## JUDICIAL DECISIONS

## ANALYSIS

Burden of proof.  
 Divorce from bed and board.  
 Interlocutory judgments.  
 Legislative powers.  
 Manner of dissolution.  
 Separate property.  
 Separation.  
 Summary judgment.  
 Valuation of community property.

**Burden of Proof.**

One who asserts the invalidity of a marriage must assume the burden of proof of such invalidity by clear and convincing evidence. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

**Divorce from Bed and Board.**

Idaho does not recognize the right to divorce from bed and board. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

**Interlocutory Judgments.**

The divorce laws contain no provision for an interlocutory judgment of divorce. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

An interlocutory judgment of divorce granted by a state court in California was not entitled to due faith and credit by an Idaho court, since Idaho does not recognize interloc-

utory judgments of divorce. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

**Legislative Powers.**

The legislature of each state has the power to control and to regulate marriages within its jurisdiction. This includes the power to regulate the qualifications of the contracting parties and the proceedings essential to constitute a marriage. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

**Manner of Dissolution.**

A marriage can only be dissolved by death of one of the parties or by the judgment of a court of competent jurisdiction. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

Marriage is dissolved only by death of one of the parties or by the judgment of a court of competent jurisdiction declaring a divorce of

the parties. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961).

**Separate Property.**

In an action by a wife, six years after her divorce, for a redetermination of community property interest in husband's pension benefits, in which wife was awarded one-half of the pension benefits, valued at the time of actual retirement, that award included increases in pension benefits which accrued after the date of divorce, and hence not acquired during marriage, but during the time the husband was an unmarried person. As such, those increases constituted the separate property of the husband, and to the extent that an interest in those post-divorce increases was awarded to the wife, it constituted an impermissible invasion of husband's separate property. *Shill v. Shill*, 115 Idaho 115, 765 P.2d 140 (1988).

**Separation.**

A marriage continues, despite a separation, until a decree of divorce. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

**Summary Judgment.**

An uncertified partial summary judgment is not final in a divorce action. *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

**Valuation of Community Property.**

The magistrate determined the valuation date to be the date of the order granting a partial divorce decree, and since community property only exists as long as the community exists, once the magistrate issued the divorce and certified it as final it necessarily follows that the date of valuation should occur on that date. *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 21 P.3d 918 (2001).

**Cited in:** *Beard v. Beard*, 53 Idaho 440, 24 P.2d 47 (1933); *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955); *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982); *Beesley v. Beesley*, 114 Idaho 536, 758 P.2d 695 (1988).

RESEARCH REFERENCES

C.J.S. — 27A C.J.S., Divorce, § 1 et seq.

**32-602. Effect of decree.** — The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. [R.S., § 2456; reen. R.C. & C.L., § 2646; C.S., § 4626; I.C.A., § 31-602.]

STATUTORY NOTES

**Cross References.** — Registration of divorce certificate, § 39-265.

Injunction, notice or bond discretionary, I.R.C.P., Rule 65(g).

Marriage not polygamous if former marriage annulled or dissolved, § 32-207.

JUDICIAL DECISIONS

ANALYSIS

Divorce from bed and board.  
Effect in general.  
Separate property.  
Validity of decree.

**Divorce from Bed and Board.**

Idaho does not recognize the right to divorce from bed and board, but does recognize the right to separate maintenance. *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940).

**Effect in General.**

The effect of a judgment of divorce is to restore the parties to the estate of unmarried persons. *Newell v. Newell*, 77 Idaho 355, 293

P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

**Separate Property.**

In an action by a wife, six years after her divorce, for a redetermination of community property interest in husband's pension benefits, in which wife was awarded one-half of the pension benefits, valued at the time of actual retirement, that award included increases in pension benefits which accrued after the date of divorce, and hence not acquired during

marriage, but during the time the husband was an unmarried person. As such, those increases constituted the separate property of the husband, and to the extent that an interest in those post-divorce increases was awarded to the wife, it constituted an impermissible invasion of husband's separate property. *Shill v. Shill*, 115 Idaho 115, 765 P.2d 140 (1988).

#### **Validity of Decree.**

Use of the word "dissolve" instead of the word "divorced" did not prevent divorce decree from being valid. *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955).

### **RESEARCH REFERENCES**

**C.J.S.** — 27C C.J.S., Divorce, § 1201 et seq.

**32-603. Causes for divorce.** — Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. When either the husband or wife has become permanently insane, as provided in sections 32-801 to 32-805, inclusive.
8. Irreconcilable differences. [1864, p. 616, § 22; R.S., § 2457; am. 1899, p. 232, § 1; 1903, p. 332, § 1; compiled and reen. R.C. & C.L., § 2647; C.S., § 4627; I.C.A., § 31-603; am. 1971, ch. 20, § 1, p. 33.]

### **STATUTORY NOTES**

**Cross References.** — Limitation of actions, § 32-615.

Separation without cohabitation, § 32-610.

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Exercise of constitutionally protected conduct as grounds for divorce.  
 Irreconcilable differences.  
 Violent conduct while intoxicated.  
 Reason for finding of fault.

#### **Exercise of Constitutionally Protected Conduct As Grounds for Divorce.**

Wife's criticism and ridicule of husband's religion constituted a constitutionally protected free exercise of religious belief, however constitutionally protected acts can create grounds for divorce. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

#### **Irreconcilable Differences.**

Since § 32-616 embodies no fault criterion, the trial court may grant a divorce in favor of spouse though not requested by that spouse if, for "substantial reasons," the marriage had

deteriorated beyond conciliation. *Ripatti v. Ripatti*, 94 Idaho 581, 494 P.2d 1025 (1972).

#### **Violent Conduct While Intoxicated.**

A defendant's testimony of plaintiff's violent conduct toward him while under the influence of alcohol and narcotics was sufficient support for the decree of the court granting a divorce to the defendant on his cross-complaint. *Johnson v. Johnson*, 92 Idaho 365, 442 P.2d 775 (1968).

#### **Reason for Finding of Fault.**

Although it is preferable for a magistrate to delineate the specific grounds for awarding a



divorce contained in this section, the court of appeals will not overturn an award of divorce based upon the fault of one spouse, where the basis for such a finding is supported by substantial competent evidence. *Bell v. Bell*, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992).

The failure of the magistrate to delineate the specific reason for the finding of fault, as set forth in this section, as the basis for the award of divorce, is not error where the rea-

sons are obvious in the record. *Bell v. Bell*, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992).

**Cited in:** *Bell v. Bell*, 15 Idaho 7, 96 P. 196 (1908); *De Cloedt v. De Cloedt*, 24 Idaho 277, 133 P. 664 (1913); *Loveland v. Loveland*, 91 Idaho 400, 422 P.2d 67 (1967); *Barker v. Barker*, 92 Idaho 204, 440 P.2d 137 (1968); *Schwartzmiller v. Winters*, 99 Idaho 18, 576 P.2d 1052 (1978).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 19 et seq.

**C.J.S.** — 27A C.J.S., Divorce, § 21 et seq.

**A.L.R.** — Construction of statute making bigamy or prior lawful subsisting marriage to third person a ground for divorce. 3 A.L.R.3d 1108.

Single act as basis of divorce or separation on ground of cruelty. 7 A.L.R.3d 761.

Fault of spouse as affecting right to divorce under statute making separation a substantial ground of divorce. 14 A.L.R.3d 502.

Retrospective effect of statute prescribing grounds of divorce. 23 A.L.R.3d 626.

Separation within statute making separa-

tion a substantive ground for divorce. 35 A.L.R.3d 1238.

Validity, construction and effect of "no-fault" divorce statutes providing for dissolution of marriage upon finding that relationship is no longer viable. 55 A.L.R.3d 581; 86 A.L.R.3d 1116.

Transvestism or transsexualism of spouse as justifying divorce. 82 A.L.R.3d 725.

Fault as consideration in alimony, spousal support, or property division awards pursuant to no-fault divorce. 86 A.L.R.3d 1116.

Homosexuality as ground for divorce. 96 A.L.R.5th 83.

**32-604. Adultery.** — Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. [R.S., § 2458; reen. R.C. & C.L., § 2648; C.S., § 4628; I.C.A., § 31-604.]

## STATUTORY NOTES

**Cross References.** — Limitation of actions, § 32-615.

Penalty for adultery, § 18-6601.

## JUDICIAL DECISIONS

### ANALYSIS

Pleading.

Proof.

### Pleading.

It is not absolutely necessary to allege name of person with whom adultery was committed. Defendant has opportunity to procure such information by demurrer for uncertainty (now abolished) and no decree can be rendered without evidence of specific act. *Rice v. Rice*, 46 Idaho 418, 267 P. 1076 (1928).

### Proof.

Divorces on the ground of adultery should be granted only upon very clear and conclusive evidence. *Brown v. Brown*, 27 Idaho 205, 148 P. 45 (1915).

Specific act of adultery must be established by evidence at trial. *Rice v. Rice*, 46 Idaho 418, 267 P. 1076 (1928).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, §§ 59, 60, 81.

**C.J.S.** — 27A C.J.S., Divorce, § 88.

**32-605. Extreme cruelty.** — Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party

to the marriage. [R.S., § 2459; reen. R.C. & C.L., § 2649; C.S., § 4629; I.C.A., § 31-605.]

## JUDICIAL DECISIONS

### ANALYSIS

Counterclaim.  
Course of conduct.  
Discretion of court.  
Effects of cruelty determined by court.  
Excusable cruelty.  
In general.  
Mental suffering.  
Sufficiency of proof.  
Violent conduct while intoxicated.

#### Counterclaim.

Even if the evidence in a divorce suit had been sufficient to support the wife's allegations of cruelty, the judgment granting a divorce to the husband on grounds of cruelty and denying the wife's counterclaim was not reversibly erroneous where the wife wanted the bonds of matrimony dissolved, either by annulment or divorce, and did not interpose her ground for divorce as a recriminatory defense; in the absence of a showing that she was prejudiced the judgment would not be reversed merely because the evidence might support a decree of divorce to both parties. *Ferguson v. Ferguson*, 91 Idaho 33, 415 P.2d 676 (1966).

#### Course of Conduct.

Extreme cruelty is a term of relative meaning and a course of conduct that would inflict mental suffering upon one person might not have that effect upon another. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

Trial court's finding of extreme cruelty on part of wife was sustained by evidence that she was incapable or unwilling to give her husband the love he desired but devoted her attention to other men, indulging in scandalous conduct. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964).

Whether a spouse's conduct constitutes extreme cruelty is primarily a question of fact to be decided by the magistrate, and the magistrate's findings will be upheld if they are supported by substantial evidence. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

#### Discretion of Court.

Finding of trial court as to cruelty causing grievous mental suffering will not be disturbed unless evidence supporting it is so slight that an abuse of discretion is indicated. *Piatt v. Piatt*, 32 Idaho 407, 184 P. 470 (1919); *Morrison v. Morrison*, 38 Idaho 45, 221 P. 156 (1923).

#### Effects of Cruelty Determined by Court.

The determination of the effects of cruelty is largely committed to the trial court. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

#### Excusable Cruelty.

Where cruelty is alleged to have consisted in the wife's hostile demonstrations and lecturing, nagging, and hectoring husband and evidence discloses that he has been so indiscreet in his conduct toward others as to arouse suspicion on part of his wife, conduct of the wife in her protests and outbursts of feeling will not be viewed with the same severity and rigidity by law as it would be in case where no such apparent provocation existed. *Spofford v. Spofford*, 18 Idaho 115, 108 P. 1054 (1910).

Party to marital contract who, by his acts and conduct, invites a remonstrance, protest, or demonstration from the other party, must expect to exercise a degree of forbearance which the law and good morals would not expect of him under more favorable circumstances. *Boeck v. Boeck*, 29 Idaho 639, 161 P. 576 (1916).

#### In General.

A divorce based on alleged extreme cruelty should not be granted for trifles. *Clayton v. Clayton*, 81 Idaho 416, 345 P.2d 719 (1959).

#### Mental Suffering.

Question as to whether acts of cruelty cause grievous mental suffering on part of innocent party is the determining question. *Donaldson v. Donaldson*, 31 Idaho 180, 170 P. 94 (1917).

Supreme Court held that evidence sustained trial court's action in granting divorce on grounds of extreme mental cruelty. *Jordan v. Jordan*, 75 Idaho 512, 275 P.2d 669 (1954).

A wife's continual attraction of and association with other men constituted extreme cruelty to the husband. *Parks v. Parks*, 91 Idaho 420, 422 P.2d 618 (1967).

When conduct is alleged to constitute ex-

treme cruelty within this section, it (the conduct) is not to be considered in the abstract; the crucial determination is how the conduct has affected a spouse. *Parks v. Parks*, 91 Idaho 420, 422 P.2d 618 (1967).

**Sufficiency of Proof.**

While the memorandum decision did not specifically state that the acts of the wife affected the mental or physical health of husband, the reasonable inference to be drawn from the language used was that her conduct caused respondent substantial mental suffering, thus supporting the necessary allegation of extreme cruelty. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

Husband's desertion of and infidelity to wife; his causing his minor children, with whom wife had developed strong emotional bonds during the five and one-half years of the marriage, to leave the home; and the financial stress resulting from husband's desertion and failure to provide sufficient sup-

port to the household budget and repayment of their joint indebtedness resulted in such emotional and mental suffering, to lead to wife's nervous breakdown and consequent hospitalization and supported finding of extreme cruelty. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991).

**Violent Conduct While Intoxicated.**

A defendant's testimony of plaintiff's violent conduct toward him while under the influence of alcohol and narcotics was sufficient support for the decree of the court granting a divorce to the defendant on his cross-complaint. *Johnson v. Johnson*, 92 Idaho 365, 442 P.2d 775 (1968).

**Cited in:** *De Cloedt v. De Cloedt*, 24 Idaho 277, 133 P. 664 (1913); *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954); *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020 (1961); *Barker v. Barker*, 92 Idaho 204, 440 P.2d 137 (1968); *Glavin v. Glavin*, 94 Idaho 813, 498 P.2d 1286 (1972).

**RESEARCH REFERENCES**

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 35 et seq.  
**C.J.S.** — 27A C.J.S., Divorce, § 40 et seq.

**A.L.R.** — Single act as basis of divorce or separation on ground of cruelty. 7 A.L.R.3d 761.

**32-606. Wilful desertion.** — Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert. [R.S., § 2460; reen. R.C. & C.L., § 2650; C.S., § 4630; I.C.A., § 31-606.]

**STATUTORY NOTES**

**Cross References.** — Continuation of cause, § 32-609.

**JUDICIAL DECISIONS**

**ANALYSIS**

Justifiable desertion.  
Mental suffering.  
Sufficiency of evidence.  
Time period.

**Justifiable Desertion.**

Where husband establishes a new home and requests his wife to follow him and furnishes her the means with which to travel, and she declines to take up her residence with him, husband is not guilty of desertion because he fails to support his wife during her absence. *Roby v. Roby*, 10 Idaho 139, 77 P. 213 (1904).

Husband who fails, neglects, or refuses to furnish his wife with a suitable home, according to his condition, and refuses to support her, is not in a position to successfully charge her with desertion if she leaves him and seeks

employment whereby she may support herself. *Bell v. Bell*, 15 Idaho 7, 96 P. 196 (1908).

**Mental Suffering.**

It is not necessary for a trial judge to enumerate the evidentiary facts which caused mental suffering. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

**Sufficiency of Evidence.**

Evidence that a husband had lived in California for more than a year and had refused to live or reside with his wife, although she offered reconciliation, was sufficient for the



granting of a divorce to the wife for desertion. *Losee v. Losee*, 91 Idaho 77, 415 P.2d 720 (1966).

**Time Period.**

Because the parties were not separated for at least one year prior to the filing of wife's

counterclaim for divorce on the ground of wilful desertion, the court erred in granting the divorce on that basis. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991).

### RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 61 et seq.

**C.J.S.** — 27A C.J.S., Divorce, § 16 et seq.

**A.L.R.** — Fault of spouse as affecting right to divorce under statute making separation a substantial ground of divorce. 14 A.L.R.3d 502.

Separation within statute making separation a substantive ground for divorce. 35 A.L.R.3d 1238.

Refusal of sexual intercourse as justifying divorce or separation. 82 A.L.R.3d 860.

**32-607. Wilful neglect.** — Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation. [R.S., § 2461; reen. R.C. & C.L., § 2651; C.S., § 4631; I.C.A., § 31-607.]

### STATUTORY NOTES

**Cross References.** — Continuation of cause, § 32-609.

Penalty for neglect of wife and children, §§ 18-401 — 18-405.

**32-608. Habitual intemperance.** — Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. [R.S., § 2462; reen. R.C. & C.L., § 2652; C.S., § 4632; I.C.A., § 31-608.]

### STATUTORY NOTES

**Cross References.** — Continuation of cause, § 32-609.

### JUDICIAL DECISIONS

**Periodic Drunkenness.**

Statute does not mean that a person would have to be drunk all the time, neither does it provide that he shall be incapacitated from pursuing his usual labors during any particular hours, or any time, but it does mean one who has a fixed habit of frequently getting drunk, and that such drunkenness causes innocent party to suffer great mental anguish and suffering. *De Cloedt v. De Cloedt*, 24

Idaho 277, 133 P. 664 (1913).

Statute does not provide that the person shall be generally drunk, or that he is drunk more hours than he is sober. It is sufficient that he have the habit and that the habit is firmly fixed upon him; that he gets drunk with recurring frequency periodically, or that he is unable to resist when opportunity and temptation are presented. *De Cloedt v. De Cloedt*, 24 Idaho 277, 133 P. 664 (1913).

RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 96 et seq.      **C.J.S.** — 27A C.J.S., Divorce, § 55.

**32-609. Continuation of cause.** — Wilful desertion, wilful neglect or habitual intemperance must continue for one (1) year before either is a ground for divorce. [R.S., § 2463; reen. R.C. & C.L., § 2653; C.S., § 4633; I.C.A., § 31-609.]

JUDICIAL DECISIONS

ANALYSIS

Desertion by husband.  
Time period for desertion.

**Desertion by Husband.**

Where husband first deserts his wife and remains absent from her for a period in excess of that prescribed by this section, she may thereafter refuse to live with him and can maintain an action against him for a divorce, or defeat an action brought by him against her for such divorce. *Stoneburner v. Stoneburner*, 11 Idaho 603, 83 P. 938 (1908).

at least one year prior to the filing of wife's counterclaim for divorce on the ground of wilful desertion, the court erred in granting the divorce on that basis. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991).

**Cited in:** *Bell v. Bell*, 15 Idaho 7, 96 P. 196 (1908).

**Time Period for Desertion.**

Because the parties were not separated for

**32-610. Separation without cohabitation.** — When married persons have heretofore lived or shall hereafter live separate and apart for a period of five (5) years or more without cohabitation, either party to the marriage contract may sue for a divorce which shall be granted on proof of the continuous living separate and apart without cohabitation of the spouses during said period of five (5) years or more. [I.C.A., § 31-609-A, as added by 1945, ch. 125, § 1, p. 191.]

JUDICIAL DECISIONS

ANALYSIS

Alimony.  
Cohabitation.  
Continuity of separation.  
Defenses.  
Fault of parties.  
Provisions mandatory.

**Alimony.**

In suit by husband, a resident of Canada, against wife, a resident of Michigan, for divorce based on five years separation where evidence showed that wife helped husband to develop his business and where husband had a business valued at \$27,000 and wife lived in a "shack" and had borrowed \$1,400 to come to Idaho to defend proceeding, an award of alimony for \$2,000 was insufficient, and Su-

preme Court increased award to \$8,000. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

**Cohabitation.**

Where husband was away from usual abode for military duty but supported his wife, visited her in her home, entertained guests with her, and at times slept in the same bed with her, the husband was not living separate and

apart from his wife. *Jordan v. Jordan*, 69 Idaho 513, 210 P.2d 934 (1949).

A divorce decree under this section will not be disturbed on appeal where, during the separation period, the parties on four occasions slept under the same roof, on one such occasion sleeping in the same bed and on another sleeping in the same room in separate beds, but evidence was conflicting as to whether the parties had sexual intercourse. *Adams v. Adams*, 89 Idaho 84, 403 P.2d 593 (1965).

### Continuity of Separation.

The five year separation period required by this section must be continuous and uninterrupted. *Jordan v. Jordan*, 69 Idaho 513, 210 P.2d 934 (1949).

### Defenses.

Recriminatory defense cannot be asserted in suit based on this section. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

### Fault of Parties.

Divorce under this section is granted on the ground of public policy and not on the ground

of fault of either of the parties. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

Fault of parties to suit for divorce based on five years separation should be considered in making division of property or award of alimony. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

### Provisions Mandatory.

In suit for divorce based on five years separation it could not be contended as a defense that period of time when complainant was married to another and could not be located by the defendant could be counted, since provisions of this section are mandatory and fault will not be considered. *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955).

**Cited in:** *Hampshire v. Hampshire*, 70 Idaho 522, 223 P.2d 950 (1950); *Howay v. Howay*, 74 Idaho 492, 264 P.2d 691 (1953); *White v. White*, 94 Idaho 26, 480 P.2d 872 (1971).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 25 et seq.

**C.J.S.** — 27A C.J.S., Divorce, §§ 71-73.

**A.L.R.** — Fault of spouse as affecting right to divorce under statute making separation a substantial ground of divorce. 14 A.L.R.3d 502.

Separation within statute making separation a substantive ground for divorce. 35 A.L.R.3d 1238.

Refusal of sexual intercourse as justifying divorce or separation. 82 A.L.R.3d 860.

### 32-611. Denial of divorce. — Divorces must be denied upon showing:

1. Collusion;
2. Condonation;
3. Recrimination; or,
4. Limitation and lapse of time. [R.S., § 2464; reen. R.C. & C.L., § 2654; C.S., § 4634; I.C.A., § 31-610.]

## JUDICIAL DECISIONS

### ANALYSIS

Recrimination.  
Time limitation.

### Recrimination.

In proceeding for divorce by husband based on extreme cruelty consisting of continual and habitual criticism by wife of husband's attempts to make a living the wife did not establish defense of recrimination based on relationship of husband with another woman which was not discovered by wife until after husband left her. *Howay v. Howay*, 74 Idaho 492, 264 P.2d 691 (1953).

### Time Limitation.

The limitation referred to in subdivision 4 of this section is not applicable to a case in which the complaining party endured the other party's offensive conduct over a period of years until driven by cumulative effect of it to seek a divorce. *Fischer v. Fischer*, 92 Idaho 379, 443 P.2d 463 (1968).

**Cited in:** *Stoneburner v. Stoneburner*, 11 Idaho 603, 83 P. 938 (1905).



RESEARCH REFERENCES

**A.L.R.** — What constitutes contract between husband and wife and third person promotive of divorce or separation. 93 A.L.R.3d 523.

**32-612. Collusion.** — Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce, and is a bar to an action for such acts. [R.S., § 2465; reen. R.C. & C.L., § 2655; C.S., § 4635; I.C.A., § 31-611.]

RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 147 et seq.  
**C.J.S.** — 27A C.J.S., Divorce, §§ 135, 136, 394.  
**A.L.R.** — What constitutes contract between husband and wife and third person promotive of divorce or separation. 93 A.L.R.3d 523.

**32-613. Recrimination.** — Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce. [R.S., § 2466; reen. R.C. & C.L., § 2656; C.S., § 4636; I.C.A., § 31-612.]

JUDICIAL DECISIONS

ANALYSIS

Divorce requested by both parties.  
Indiscretion as recrimination.  
Recrimination a defense.

**Divorce Requested by Both Parties.**

The doctrine of recrimination did not apply to an action in which each party asked for a divorce from the other, with counsel reading prepared written statements of the parties in lieu of testimony concerning grounds for divorce, where the trial was reopened on the motion of plaintiff solely to permit further evidence concerning property valuations. *Johnson v. Johnson*, 92 Idaho 365, 442 P.2d 775 (1968).

**Indiscretion as Recrimination.**

Mere indiscretion, though reprehensible, does not amount to recrimination. *Morrison v. Morrison*, 38 Idaho 45, 221 P. 156 (1923).

**Recrimination a Defense.**

Defense of recrimination constitutes a com-

plete bar to a divorce, when defendant shows a valid existing cause of action for divorce against plaintiff. *Stoneburner v. Stoneburner*, 11 Idaho 603, 83 P. 938 (1905).

In proceeding for divorce by husband based on extreme cruelty consisting of continual and habitual criticism by wife of husband's attempts to make a living, the wife did not establish defense of recrimination based on relationship of husband with another woman which was not discovered by wife until after husband left her. *Howay v. Howay*, 74 Idaho 492, 264 P.2d 691 (1953).

**Cited in:** *Hampshire v. Hampshire*, 70 Idaho 522, 223 P.2d 950 (1950).

RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 182 et seq.  
**A.L.R.** — Power of court to grant absolute divorce to both spouses upon showing of mutual fault. 13 A.L.R.3d 1364.  
Fault of spouse as affecting right to divorce under statute making separation a substantial ground of divorce. 14 A.L.R.3d 502.

**32-614. Condonation.** — Condonation of a cause of divorce shown in the answer as a recriminatory defense, is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if two (2) years or more have elapsed after the condonation. [R.S., § 2467; reen. R.C. & C.L., § 2657; C.S., § 4637; I.C.A., § 31-613.]

## JUDICIAL DECISIONS

### ANALYSIS

Cumulative effect of offensive conduct.  
Defenses.

#### Cumulative Effect of Offensive Conduct.

This section is not applicable to a case in which the complaining party endured the other party's offensive conduct over a period of years until driven by the cumulative effect of it to seek a divorce. *Fischer v. Fischer*, 92 Idaho 379, 443 P.2d 463 (1968).

#### Defenses.

Barred causes of action for divorce cannot be urged as recriminatory defenses. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 159 et seq.

#### **32-615. Limitations.** — A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two (2) years after the commission of the act of adultery, or after its discovery by the injured party.
2. When the cause is conviction of felony, and the action is not commenced before the expiration of one (1) year after a pardon or the termination of the period of sentence.
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. [R.S., § 2468; reen. R.C. & C.L., § 2658; C.S., § 4638; I.C.A., § 31-614.]

## JUDICIAL DECISIONS

### ANALYSIS

Discovery.  
Lapse of time.

#### Discovery.

Where wife did not "discover" husband's affair until 1989, and never discovered many of husband's other acts of adultery, there was substantial and competent evidence that the divorce based on adultery was not barred by the statute of limitations. *Smith v. Smith*, 124 Idaho 431, 860 P.2d 634 (1993).

#### Lapse of Time.

In suit by former resident of Canada for divorce based on five years separation, a cross complaint by defendant wife, a resident of

Michigan, based on desertion, neglect, and cruelty occurring more than ten years prior thereto was barred by this section since it would be assumed that the law of Michigan was the same as the law of Idaho where no evidence was introduced as to law of Michigan. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

Subdivision 3 of this section does not apply to a case in which the complaining party endured the other party's offensive conduct over a period of years until driven by the cumulative effect of it to seek a divorce.

Fischer v. Fischer, 92 Idaho 379, 443 P.2d 463 (1968).

**32-616. Irreconcilable differences.** — Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved. [I.C., § 32-616, as added by 1971, ch. 20, § 2, p. 33.]

## JUDICIAL DECISIONS

### Substantial Reasons.

Since this section embodies no fault criterion, the trial court may grant a divorce in favor of spouse though not requested by that

spouse if, for "substantial reasons," the marriage had deteriorated beyond conciliation. Ripatti v. Ripatti, 94 Idaho 581, 494 P.2d 1025 (1972).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am.Jur.2d, Divorce and Separation, § 2.

**C.J.S.** — 27A C.J.S., Divorce, § 29 et seq.

**A.L.R.** — Validity, construction and effect of "no-fault" divorce statutes providing for

dissolution of marriage upon finding that relationship is no longer viable. 55 A.L.R.3d 581; 86 A.L.R.3d 1116.

Transvestism or transsexualism of spouse as justifying divorce. 82 A.L.R.3d 725.

## CHAPTER 7

### DIVORCE ACTIONS

#### SECTION.

- 32-701. Residence required by plaintiff.
- 32-702. Domicil of parties.
- 32-703. Default and uncorroborated statements.
- 32-704. Allowance of support money, court costs and attorney fees — Representation of child.
- 32-705. Maintenance.
- 32-706. Child support.
- 32-706A. [Repealed.]
- 32-707. Security.
- 32-708. What property liable.
- 32-709. Modification of provisions for maintenance and support.
- 32-710. [Repealed.]
- 32-710A. Support payments paid to the department of health and welfare.
- 32-711. [Repealed.]

#### SECTION.

- 32-712. Community property and homestead — Disposition.
- 32-713. Community property and homestead — Order for disposition.
- 32-713A. [Repealed.]
- 32-714. Community property and homestead — Revision on appeal.
- 32-715. Jurisdiction of actions.
- 32-716. Reconciliation proceedings.
- 32-717. Custody of children — Best interest.
- 32-717A. Parents' access to records and information.
- 32-717B. Joint custody.
- 32-717C. Allegations of abuse — Investigation.
- 32-717D. Parenting coordinator.
- 32-718. Vexatious or harassing modification proceedings.
- 32-719. Visitation rights of grandparents and great-grandparents.

**32-701. Residence required by plaintiff.** — A divorce must not be granted unless the plaintiff has been a resident of the state for six (6) full weeks next preceding the commencement of the action. [1875, p. 639, § 3; R.S., § 2469; reen. R.C., § 2659; am. 1917, ch. 125, § 1, p. 414; reen. C.L., § 2659; C.S., § 4639; am. 1931, ch. 77, § 1, p. 132; I.C.A., § 31-701; am. 1937, ch. 94, § 1, p. 131.]



## STATUTORY NOTES

**Cross References.** — Exclusion of witnesses, I.R.C.P., Rule 77(b).

Procedure in divorce for insanity, § 32-801 et seq.

Trial of issues may be private, I.R.C.P., Rule 77(b).

## JUDICIAL DECISIONS

### ANALYSIS

Jurisdiction.

Residence.

—Changes of domicil.

—Defined.

—Elements.

—Evidence.

—Intent to establish.

—Member of armed services.

### **Jurisdiction.**

In actions for divorce, determination of whether plaintiff has been a resident of the state for the required time, is not a question of jurisdiction, but with determination of "domicil" it is otherwise, for jurisdiction of the res depends on "domicil." *Robinson v. Robinson*, 70 Idaho 122, 212 P.2d 1031 (1949).

This section does not diminish the broad jurisdiction of courts in divorce actions created by the Constitution, it merely prescribes a condition or qualification which the plaintiff must meet to entitle him to a divorce. *Robinson v. Robinson*, 70 Idaho 122, 212 P.2d 1031 (1949).

### **Residence.**

A divorce decree cannot be granted in contravention of this section but must be set aside where plaintiff does not allege the fundamental essential, namely six full weeks residence in this state. *Rickman v. Rickman*, 80 Idaho 172, 327 P.2d 376 (1958).

### **—Changes of Domicil.**

Temporary absence from state is not change of residence unless party intends to acquire new domicil. *Reubelmann v. Reubelmann*, 38 Idaho 159, 220 P. 404 (1923).

To effect a change of domicil, there must be a removal and an intent, and the fact that the removal is accomplished because of the performance of a duty by reason of being in the service of the United States is immaterial, where the intent is established. *Hawkins v. Winstead*, 65 Idaho 12, 138 P.2d 972 (1943).

### **—Defined.**

"Residence" as used in this section means domicil. *Reubelmann v. Reubelmann*, 38 Idaho 159, 220 P. 404 (1923).

Actual residence as distinguished from a constructive residence is required. *Hampshire v. Hampshire*, 70 Idaho 522, 223 P.2d 950 (1950).

### **—Elements.**

To constitute a residence within meaning of statute there must be a habitation or abode in a particular place, for the required time, and an intention to remain there permanently or indefinitely. *Hampshire v. Hampshire*, 70 Idaho 522, 223 P.2d 950 (1950); *Smestad v. Smestad*, 94 Idaho 181, 484 P.2d 730 (1971).

### **—Evidence.**

If evidence on good faith of plaintiff's domicil is conflicting the determination of the court upon the issue based on substantial and competent evidence is conclusive. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

Wife, a former resident of California, was entitled to a divorce in Idaho where evidence by herself and two corroborating witnesses showed that she intended to abandon residence in California and establish a new residence in Idaho. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

A reasonable inference to be drawn from the court's finding that plaintiff should be granted a divorce was that plaintiff's residence within this state was of such nature and duration as was necessary to meet the statutory requirements, otherwise the court would not have found that plaintiff was entitled to a divorce. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

Where evidence was submitted by wife that husband had left property in the state of Nebraska where he had been a lifelong resident, that he had no relatives in Idaho and was not a registered voter in Idaho and where husband testified that he did not come to Idaho for the purpose of obtaining a divorce but rather for the purpose of living in Idaho where he was seeking employment and an escape from the circumstances of his life in Nebraska, finding that husband was a resident of and domiciled in Idaho would not be

set aside, such issue of fact of residence being for the trial judge's consideration. *Milbourn v. Milbourn*, 86 Idaho 213, 384 P.2d 476 (1963).

The trial court having determined the issue of husband's Idaho residence at the time of divorce upon substantial and competent though conflicting evidence, its findings will not be set aside by the Supreme Court. *Milbourn v. Milbourn*, 86 Idaho 213, 384 P.2d 476 (1963).

Where all the pleadings of the parties alleged the residence of both parties in Idaho for more than six months prior to the commencement of the action in 1965 and defendant testified that "right after the marriage" in 1960 they established their residence in Idaho, the defendant's residence was sufficiently shown. *Johnson v. Johnson*, 92 Idaho 365, 442 P.2d 775 (1969).

Where record indicated the plaintiff arrived in state of Idaho on September 29, and informed his wife in December of that year that he "was not coming home," based on this evidence, trial court found that the plaintiff actually resided within the state of Idaho for at least six weeks pursuant to the statute and therefore trial court had jurisdiction over the divorce proceedings instituted by the plaintiff after the completion of the six week period. *Smestad v. Smestad*, 94 Idaho 181, 484 P.2d 730 (1971).

Where evidence showed that member of armed forces had for more than six weeks immediately preceding commencement of di-

vorce action been a resident of the state and that he intended to remain as long as permitted by the Air Force the residency requirement of this section was satisfied. *Bezold v. Bezold*, 95 Idaho 131, 504 P.2d 404 (1972).

**—Intent to Establish.**

It is essential before a person can lawfully file a complaint for divorce that he shall have been actually a bona fide resident for six weeks preceding commencement of the action, and an intention to reside in Idaho in the future is not sufficient. *Hampshire v. Hampshire*, 70 Idaho 522, 223 P.2d 950 (1950).

**—Member of Armed Services.**

A soldier in the United States Army stationed at an air base within the state, but living off the base by permission of his commanding officer, could establish a new "residence" in the county and state for the purpose of maintaining a divorce suit, notwithstanding the constitutional provision that residence for voting purposes is not lost or gained by reason of presence or absence while employed in the service of the United States. *Hawkins v. Winstead*, 65 Idaho 12, 138 P.2d 972 (1943).

**Cited in:** *Strode v. Strode*, 6 Idaho 67, 52 P. 161 (1898); *Bair v. Bair*, 91 Idaho 30, 415 P.2d 673 (1966); *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969); *White v. White*, 94 Idaho 26, 480 P.2d 872 (1971); *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

**RESEARCH REFERENCES**

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 201 et seq.

**C.J.S.** — 27A C.J.S., Divorce, § 153 et seq.

**A.L.R.** — Assumption or denial of jurisdiction of action involving matrimonial disputes. 9 A.L.R.3d 545.

What constitutes residence or domicile within state by citizen of another country for purpose of jurisdiction in divorce. 51 A.L.R.3d 223.

Validity of statute imposing durational residency requirements for divorce applicants. 57 A.L.R.3d 221.

Validity and construction of statutory provision relating to jurisdiction of court for purpose of divorce for servicemen. 73 A.L.R.3d 431.

**32-702. Domicil of parties.** — In actions for divorce the presumption of law that the domicil of the husband is the domicil of the wife, does not apply. After separation each may have a separate domicil, depending for proof upon actual residence, and not upon legal presumptions. [R.S., § 2470; reen. R.C. & C.L., § 2660; C.S., § 4640; I.C.A., § 31-702.]

**JUDICIAL DECISIONS**

ANALYSIS

Evidence.  
Jurisdiction.  
Venue.

**Evidence.**

Wife, a former resident of California, was entitled to a divorce in Idaho where evidence by herself and two corroborating witnesses showed that she intended to abandon residence in California and establish a new residence in Idaho. *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

Where plaintiff failed to establish, by clear and convincing evidence, that defendant perjured himself when he testified as to his subjective intent concerning domicile when he came to Idaho, the trial court did not abuse its discretion in denying her motion to set judgment aside. *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969).

**Jurisdiction.**

The law of the place of the actual, bona fide domicile of a complaining spouse, acquired in compliance with the requirements of this section, gives jurisdiction to the proper courts to decree divorce for any cause allowed by the local law, without any reference to the law of the place of the marriage or of the place where the offense complained of was committed.

*Stewart v. Stewart*, 32 Idaho 180, 180 P. 165 (1919).

**Venue.**

This section and § 32-715 do not fix venue in divorce cases. Section 5-404 governs. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938).

This section allows separate domicils after separation but does not fix the venue of divorce suits in any particular county where both parties reside within the state. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938).

A failure to retain jurisdiction of wife's divorce action in a county which was not that of the husband's residence was not an abuse of discretion, where the wife merely stated that it would be inconvenient for her to prosecute the action in the county of the husband's residence, but did not name her witnesses, or, if there were witnesses in the county where the action was brought, did not state whether they would testify as to transactions in the county of the husband's residence where the alleged cruelty and failure to support occurred. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938).

**RESEARCH REFERENCES**

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 201 et seq.

**C.J.S.** — 27A C.J.S., Divorce, § 153 et seq.

**A.L.R.** — Assumption or denial of jurisdiction of action involving matrimonial disputes. 9 A.L.R.3d 545.

Domestic recognition of divorce decree obtained in foreign country and attacked for

lack of domicile or jurisdiction of parties. 13 A.L.R.3d 1419.

What constitutes residence or domicile within state by citizen of another country for purpose of jurisdiction in divorce. 51 A.L.R.3d 223.

Soldiers' and Sailors' Civil Relief Act, effect of. 35 A.L.R. Fed. 649.

**32-703. Default and uncorroborated statements.** — A divorce may be granted upon the default of the defendant, upon the uncorroborated statement, admission or testimony of the plaintiff. [1875, p. 639, § 8; R.S., § 2471; reen. R.C. & C.L., § 2661; C.S., § 4641; I.C.A., § 31-703; am. 1943, ch. 132, § 1, p. 269; am. 1983, ch. 30, § 1, p. 80.]

**STATUTORY NOTES**

**Compiler's Notes.** — As enacted the section heading of this section read: "Default and

uncorroborated statements — Corroboration of residence requirements."

**JUDICIAL DECISIONS****ANALYSIS**

Inference as to grounds for divorce.  
Opening defaults.

**Inference As to Grounds for Divorce.**

Where the complaint, in divorce action wherein divorce was granted upon default, did not charge adultery beyond such infer-

ences as might be drawn from the allegation of cruelty in that "defendant has engaged in numerous affairs with other men" and no evidence of adultery was offered, the defen-



dant would not be considered to have been divorced for adultery so as to render her consent unnecessary in a proceeding for the adoption of her children. *Leonard v. Leonard*, 88 Idaho 485, 401 P.2d 541 (1965).

#### Opening Defaults.

Every reasonable opportunity should be afforded each of the parties to a full hearing,

and a liberal rule adopted in opening defaults. *Darwin v. Darwin*, 27 Idaho 303, 149 P. 467 (1915).

**Cited in:** *Strode v. Strode*, 6 Idaho 67, 52 P. 161 (1898); *Hores v. Hores*, 20 Idaho 769, 119 P. 876 (1911); *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969); *Ellis v. Ellis*, 118 Idaho 468, 797 P.2d 868 (Ct. App. 1990).

**32-704. Allowance of support money, court costs and attorney fees — Representation of child.** — 1. While an action for divorce is pending, the court may, in its discretion, on the motion of either party and upon showing made in conformity with section 32-705 or section 32-706, Idaho Code, whichever be appropriate, order the payment of temporary maintenance of either spouse by the other or temporary support of a child of the marriage, in amounts and on terms just and proper under the circumstances.

2. The court may, in its discretion, on the motion of either party enter a decree of legal separation, providing for custody of children, division of property, payment of debts, payment of child support, and payment of spousal support as set forth in the statutes governing domestic relations.

3. The court may from time to time after considering the financial resources of both parties and the factors set forth in section 32-705, Idaho Code, order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

4. The court may appoint an attorney to represent the interests of a minor or dependent\* child with respect to his or her support, custody, and visitation, but only in those instances where the court deems legal representation necessary beyond any court ordered and court related services previously authorized for the particular case. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county in which the action is pending. [1875, p. 639, § 7; R.S., § 2472; reen. R.C. & C.L., § 2662; C.S., § 4642; I.C.A., § 31-704; am. 1980, ch. 378, § 2, p. 961; am. 1994, ch. 352, § 1, p. 1112.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1980, ch. 378, compiled as §§ 32-704 — 32-709, 32-712, 32-717, 32-718, 32-804.

#### JUDICIAL DECISIONS

##### ANALYSIS

Award of costs and attorney's fees.  
— Discharge under Bankruptcy Code.

- Financial need.
- Not appropriate.
- On appeal.
- On appeal.
- On modification of decree.
- On remand.
- Post-divorce proceedings.
- Prior to divorce decree.

Award of temporary maintenance.

Child support.

Construction.

Determining amount.

Discretion of court.

Effect of denial.

Evidence.

Factors.

Failure to qualify.

Fault.

Foreign judgment.

Jurisdiction.

Manner of payment.

Misconduct as affecting allowance.

Remarriage.

Settlement agreements.

Settlement contracts.

Statement of factors considered.

Suspension of payments.

#### **Award of Costs and Attorney's Fees.**

There is nothing in this section that confines attorney's fee to future and not to past services. *Taylor v. Taylor*, 33 Idaho 445, 196 P. 211 (1921).

While action for divorce could not be resumed after condonation, it could be continued for purpose of compelling husband to pay wife's attorney's fees. *Taylor v. Taylor*, 33 Idaho 445, 196 P. 211 (1921); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Where decree did not require husband to pay fees of wife's attorney, the court could not fix fees of attorneys in the proceeding, or place a lien for such fees on real estate in which wife had an interest. *Heslip v. Heslip*, 74 Idaho 368, 262 P.2d 999 (1953).

It was error for the trial court to disallow attorney fees and costs to defendant wife in divorce action where neither party had ample funds with which to prosecute the appeal. *Lovell v. Lovell*, 80 Idaho 251, 328 P.2d 71 (1958). (Decision prior to 1980 amendment).

Even though the husband was granted divorce on the ground of extreme cruelty, trial court erred in denying allowance of attorney fees to wife, since this statute contemplates the husband must, if possible, help her bear the expense. *Riggers v. Riggers*, 81 Idaho 570, 347 P.2d 762 (1959). (Decision prior to 1980 amendment).

The allowance of attorney fees is discretionary with the trial court, and an award of \$100 in addition to \$150 paid before the trial was not unreasonable. *Voss v. Voss*, 91 Idaho 17, 415 P.2d 303 (1966).

Failure to award the plaintiff-wife more than \$1,000 above the minimum attorney's fee suggested by the state bar association advisory fee schedule for a contested divorce was not an abuse of discretion. *Hammond v. Hammond*, 92 Idaho 623, 448 P.2d 237 (1968).

The court did not abuse its discretion in awarding attorney's fees to the wife even though the husband was the prevailing party. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

Attorney's fees must be allowed at the discretion of the trial court whenever one parent to a child custody case, whether husband or wife, is found to be unable to proceed without payment of attorney's fees, and where the other parent is able to pay that amount, notwithstanding the outcome of the appeal. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

Where wife had assets valued at approximately \$68,000, the trial court's determination that she had sufficient assets to pay her attorney fees could not be characterized as an abuse of discretion. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

The award of attorney fees under this section is discretionary with the trial court; where a party has sufficient assets to pay attorney fees, it is not an abuse of discretion to deny a request for a fee award. *Sherry v. Sherry*, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985).

This section authorizes the trial court to award attorney fees in an action to modify a divorce decree where the financial resources

of the parties so dictate; such an award is not appropriate where a party has the financial resources necessary to prosecute or defend the action. *Golder v. Golder*, 110 Idaho 57, 714 P.2d 26 (1986).

Where the wife was awarded an additional \$166,000 as her share of the parties' community property, it cannot be said that she was without sufficient funds to pay her attorney fees. *Golder v. Golder*, 110 Idaho 57, 714 P.2d 26 (1986).

Where, in a divorce action, the husband presented neither a genuine legal issue nor a cogent challenge to the judge's exercise of discretion, the wife was awarded attorney fees under this section. *McPherson v. McPherson*, 112 Idaho 402, 732 P.2d 371 (Ct. App. 1987).

The trial court did not abuse its discretion by awarding attorney fees to the wife and requiring the husband to pay those attorney fees as part of the community debt. *Shurtliff v. Shurtliff*, 112 Idaho 1031, 739 P.2d 330 (1987).

The award of attorney fees in divorce actions and marital property divisions has long been the province of the trial court and the court is bound by the standard pronounced in this section and § 32-705. *Beesley v. Beesley*, 114 Idaho 536, 758 P.2d 695 (1988).

The magistrate acted within his discretion in awarding attorney fees to wife. *Desfosses v. Desfosses*, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991).

For a court to award attorney fees under subsection (2) of this section, it must consider the financial resources of the parties and the factors in § 32-705. *Bell v. Bell*, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992).

Neither party was entitled to attorney fees pursuant to § 32-704(3) because there was nothing in the record that indicated that either party presented a request for such an award under the statute to the magistrate or district court judge, nor did they provide any information to the court to support the request. *Gustaves v. Gustaves*, 138 Idaho 64, 57 P.3d 775 (2002).

Trial court did not abuse its discretion in awarding attorney fees as the husband earned approximately 84 percent of the parties' combined income and also owned investment and income-producing property; although the wife was awarded assets of a significant value in the divorce, many of the assets, such as the house and other real property, were not liquid. *Stephens v. Stephens*, 138 Idaho 195, 61 P.3d 63 (Ct. App. 2002).

In a divorce action, the magistrate did not abuse his discretion when he denied the wife's request for attorney fees and costs, because the same evidence that supported the denial of maintenance, showing that the wife could

meet her monthly expenses, also supported a denial of her request for attorney fees and costs. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

#### —Discharge Under Bankruptcy Code.

Award of expert witness costs was based upon ex-wife's prevailing in action for equitable restitution, not on financial need, and therefore was not in nature of support under Bankruptcy Code, 11 U.S.C. § 523(a)(5), and was therefore dischargeable. *Hainline v. Neal*, 179 Bankr. 234 (Bankr. D. Idaho 1995).

Attorney fees, if awarded on remand, would be in the nature of support and therefore an exception to discharge under Bankruptcy Code, 11 U.S.C. § 523(a)(5). *Hainline v. Neal*, 179 Bankr. 234 (Bankr. D. Idaho 1995).

#### —Financial Need.

Subsection (2) is not the exclusive avenue available to a party seeking attorney fees in a divorce action. A court may award fees based on financial need under this section, however, § 12-121 applies to all civil actions. *Hentges v. Hentges*, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Where magistrate's decision indicated that he had reviewed the factors set forth in this section and in § 32-705, and found that each party had sufficient property and employment to provide for his or her reasonable needs, he did not abuse his discretion in denying attorney fees to mother pursuant to this section. *Jensen v. Jensen*, 128 Idaho 600, 917 P.2d 757 (1996).

Where mother stipulated in reply brief that the court could rely on the financial record before the magistrate in determining whether mother was entitled to attorney fees on appeal, magistrate's finding that each party had sufficient property and employment to provide for their reasonable needs precluded award. *Jensen v. Jensen*, 128 Idaho 600, 917 P.2d 757 (1996).

The magistrate did not abuse its discretion in awarding attorney fees pursuant to subsection (3) where the magistrate found that a substantial disparity existed between the incomes of the parties, that the wife was incapable of paying her own attorney fees, and that the husband could afford to pay those fees for her, and these findings were supported by substantial and competent evidence contained in the record. *Perez v. Perez*, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000).

Disparity in income is sufficient to support a magistrate's conclusion that the party with the higher income should pay a share of the other party's attorney fees under § 32-704. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

#### —Not Appropriate.

Where the trial court found that wife was able to support herself through employment



and she was underemployed and where husband did not have the ability to pay wife's attorney fees because he was supporting another family and would be paying increased child support, the trial court did not abuse its discretion by refusing to award attorney fees to wife. *Ireland v. Ireland*, 123 Idaho 955, 855 P.2d 40 (1993).

Where the record and arguments made in a divorce action did not lead to a conclusion that the action was brought, pursued, or defended frivolously, nor was unreasonable or without foundation, attorney's fees were inappropriate. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

In a proceeding to modify a divorce decree, where it was determined that the defenses of the party objecting to the proposed modification were not pursued or defended frivolously, unreasonably or without foundation and where the magistrate's decision did not apply the factors set forth in § 32-705, the magistrate's decision to award attorney fees was in error and could not be upheld. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).

Because defendant did not seek an order from the judge requiring plaintiff to pay her attorney's fees on appeal in divorce action, fees would not be awarded unless it was necessary to the exercise of appellate jurisdiction and as defendant had been able to defend appeal thus far, an award of attorney's fees was not necessary and denied under this section. *Wilson v. Wilson*, 131 Idaho 533, 960 P.2d 1262 (1998).

Where a plaintiff did not seek an order from the district judge requiring the defendant to pay her attorney fees on appeal, and where such an award was not necessary to the exercise of appellate jurisdiction because the plaintiff had been able to defend the appeal, attorney fees were not awarded. *Thomas v. Worthington*, 132 Idaho 825, 979 P.2d 1183 (1999).

Where a mother acted in violation of a magistrate's order regarding the relocation of two minor children, awarding fees under § 32-704 was inappropriate. *Roberts v. Roberts*, 138 Idaho 401, 64 P.3d 327 (2003).

#### —On Appeal.

On appeal, Supreme Court will award wife costs and attorney's fees to prosecute or defend the appeal. *Roby v. Roby*, 10 Idaho 139, 77 P. 213 (1904); *Stoneburner v. Stoneburner*, 11 Idaho 603, 83 P. 938 (1905); *Spofford v. Spofford*, 18 Idaho 115, 108 P. 1054 (1910). (Decisions prior to 1980 amendment).

Where, in a divorce suit, it appeared that defendant was a wealthy man, and his wife was without means to properly prosecute her suit for divorce, court would allow her attorney's fees on an appeal from order refusing to change place of trial. *Day v. Day*, 12 Idaho

556, 86 P. 531, 10 Ann. Cas. 260 (1906).

When lower court allows an inadequate amount, its order will be revised on appeal. *Day v. Day*, 12 Idaho 556, 86 P. 531, 10 Ann. Cas. 260 (1906).

Order requiring husband to pay wife fees to combat husband's appeal from order allowing wife counsel fees was not improper as being collateral to main action. *Largilliere v. Largilliere*, 50 Idaho 496, 298 P. 362 (1931).

Being without funds or property does not absolve husband from duty to provide wife with funds necessary to pay costs and attorney's fees on appeal. *Bedke v. Bedke*, 56 Idaho 235, 53 P.2d 1175 (1935). (Decision prior to 1980 amendment).

Where there is an uncertainty as to the financial ability of either party to pay attorneys' fees and costs of printing brief on appeal and uncertainty as to disposition of the case, a motion by respondent for attorneys' fees and costs will not be considered and determined until disposition of the appeal. *McHan v. McHan*, 59 Idaho 41, 80 P.2d 29 (1938).

A husband was required, under this section, to pay attorney's fees and costs of appeal of the wife from the order granting the husband's motion for a change of venue of a divorce action to the county of the husband's residence, notwithstanding the order was affirmed. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938). (Decision prior to 1980 amendment).

This section contemplates that the husband must, if financially able, at least help to bear the expense of appeal. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938). (Decision prior to 1980 amendment).

Where district court had made order against husband to provide funds for payment of costs and expenditure of wife's appeal, Supreme Court would not enforce order where wife had borrowed funds to perfect appeal, since district court was able to enforce its own orders. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

The trial court may, under prescribed conditions, allow attorney fees and costs on appeal from the trial court's decision in divorce case. *Wenzel v. Wenzel*, 76 Idaho 7, 276 P.2d 485 (1954).

Where wife was without funds and was in poor health, and husband was in control of community funds and was earning \$750 a month in wages, the trial court did not abuse its discretion in requiring husband to pay \$500 to wife's counsel for conduct of appeal proceeding. *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954).

Where a divorce action was still pending because of the pending question of child custody, an allowance by the trial court of \$50 for the wife's attorney's fee on appeal did not constitute a limitation upon the amount to be

allowed therefor, since the mother of the children had a right to be represented, the matter of fixing the balance of attorney's fee in addition to the sum of \$50 allowed resting in the discretion of the trial court. *Merrill v. Merrill*, 83 Idaho 306, 362 P.2d 887 (1961).

Trial court abused its discretion in making award to wife for payment of attorney fees in defense of appeal from the finding that the husband was in contempt of court for failure to pay attorney fees, where after the entry of judgment decreeing her rights in community property, wife had access to and control of her share of the community property and thus the award could not be characterized as an award of money necessary to enable her to prosecute or defend such action. *Parker v. Parker*, 97 Idaho 209, 541 P.2d 1177 (1975).

Where the plaintiff wife, by judgment, had been awarded over \$300,000 of the community property, and she had access to and control of substantial portions of the property so awarded, the trial court erred in requiring the defendant husband to pay \$2,000 of the wife's attorney fees incurred by the wife during post-trial motions after judgment had been rendered. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982).

Where an appeal in a divorce case is brought frivolously and without foundation, an appellate court may award fees under § 12-121. In such a case, the amount awarded is fixed by reference to Rule 54(e)(3), I.R.C.P. which enables the judge to consider the factors listed in § 32-705 and incorporated by reference into subsection 2. In this way § 12-121 plays a role in divorce cases without unduly encroaching upon the financial assistance scheme contemplated by subsection (2). *Hentges v. Hentges*, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Where party did not provide a transcript of the proceedings below, appellate court was unable to review the transcript to determine whether the magistrate found that she had sufficient assets to pay her own attorney fees, and because error will not be presumed on appeal, the magistrate did not abuse his discretion by failing to award attorney fees and costs to said party. *Brooks v. Brooks*, 119 Idaho 275, 805 P.2d 481 (Ct. App. 1990).

#### —On Appeal.

Because it has been the policy of the Idaho Supreme Court to leave to the trial court, under the authority of this section, the making and enforcing of all orders necessary to provide a spouse with the means of prosecuting or defending an appeal, it was within the magistrate's discretion to award attorney fees to wife for her defense of husband's appeal to the district court. *Perez v. Perez*, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000).

An award of attorney fees pursuant to sub-

section (2) is not dependent upon who prevails, and the magistrate did not abuse its discretion in awarding attorney fees to the wife for her defense of the appeal to the district court without first determining that the wife was a prevailing party pursuant to I.R.C.P. 54(e)(1). *Perez v. Perez*, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000).

Neither a husband nor a wife were granted attorney fees in an appeal from the district court's decision as to the magistrate's distribution of their assets pursuant to a divorce action, where neither party had requested an award for such fees in the trial court; however, the husband was awarded costs because he was the prevailing party. *Larson v. Larson*, 139 Idaho 972, 88 P.3d 1212 (Ct. App. 2003).

#### —On Modification of Decree.

Where defendant sought to vacate decree after statutory time for so doing had elapsed, order vacating decree was without jurisdiction, and suit money granted for prosecution of such action was erroneous. *Rice v. Rice*, 46 Idaho 418, 267 P. 1076 (1928).

Where husband moved court to modify divorce decree respecting care and custody of children, court had authority to allow wife attorney's fees in contest. *Gifford v. Gifford*, 50 Idaho 517, 297 P. 1100 (1931); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Wife was not entitled to recover costs in resisting husband's application for modification of decree where she had been paid \$280 even after her secret marriage and she had separate property. *McHan v. McHan*, 59 Idaho 496, 84 P.2d 984 (1938).

Trial court did not abuse its discretion in granting wife attorney fees and expenses necessary to defend husband's petition to modify decree where she was required to travel from outside the state to attend hearing. *Wright v. Wright*, 76 Idaho 393, 283 P.2d 1101 (1955).

On appeal from order of court awarding respondent attorney fees and costs for an appeal from an order of modification of alimony payments where parties to divorce action had entered into a property settlement agreement discharging the husband from any further liability in the payment of attorney fees or court costs in connection with the divorce action, the divorce action was held to be still pending in that the husband was seeking a modification of the decree and the allowance of support money and fees would be within the sound discretion of the court. *Daniels v. Daniels*, 81 Idaho 12, 336 P.2d 112 (1959).

A divorce action is still pending within the meaning of this section when the motion is made by the father to modify the decree respecting the care and custody of children, and the court has authority to allow wife's



attorney fees in the contest: *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

When plaintiff mother acted on behalf of child in defending against defendant's motion to modify the original decree of divorce in that he sought modification of the original decree to continue the payments of child support under the original decree and at such time child was defendant's adjudged dependent and defendant was moving party, plaintiff was entitled to reasonable attorney fees and allowance of costs. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963); *Adams v. Adams*, 93 Idaho 113, 456 P.2d 757 (1969).

A wife's averments in an affidavit in support of her motion for modification of a decree as to support provisions to the effect that she was unable to pay travel expenses, attorney's fees, and costs were conclusions, and, in the absence of any factual showing of her incomes, resources, and financial condition, it was not an abuse of discretion on the part of the trial court to deny her motion for allowance of such expenses, fees, and costs. *Turner v. Turner*, 90 Idaho 308, 410 P.2d 648 (1966).

In an action for modification of a divorce decree, the award of attorney's fees is discretionary with the court. *Heidemann v. Heidemann*, 96 Idaho 602, 533 P.2d 96 (1974).

Denial of attorney fees to former wife in action to modify divorce decree by increasing amount of child support was not an abuse of discretion by the trial court where the former wife had denied former husband his child visitation rights and where the former wife testified she could pay attorney fees if required. *Heidemann v. Heidemann*, 96 Idaho 602, 533 P.2d 96 (1974).

Great disparity in income between husband and wife was sufficient to support magistrate's conclusion that husband should pay a share of ex-wife's attorney's fees in a custody modification proceeding. *Pieper v. Pieper*, 125 Idaho 667, 873 P.2d 921 (Ct. App. 1994).

#### —On Remand.

A divorce action which is in the district court on remand from the Supreme Court is still "pending" within the meaning of this section and the trial court has jurisdiction to consider a motion for allowance of attorney's fees even though the order of remand was silent on the subject. *Tolman v. Tolman*, 93 Idaho 374, 461 P.2d 433 (1969).

#### —Post-Divorce Proceedings.

The trial court may, pursuant to this section, make awards of costs and attorney fees in post-divorce decree proceedings. The financial resources of the parties must first be considered and then the factors under I.C. § 32-705 must be considered and applied. Because there is no "community" in post-divorce decree proceedings, community property is not liable for these awards. *Josephson*

*v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

Where there was adequate evidence presented to demonstrate a disparity in incomes relating to the parties' abilities to carry on an appeal of a child custody award, the magistrate judge was within his discretion in ordering the father to pay a portion of the mother's attorney fees. The mother was not able to make ends meet and pay her attorney fees at the same time. The magistrate erred in making it an open-ended award without any determination about what a reasonable attorney fee would be. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

#### —Prior to Divorce Decree.

Under this section, the trial court may award attorney fees and costs to one spouse prior to the decree of divorce; such awards would ordinarily be made where one spouse has control over a substantial amount of community assets and the other spouse has a financial need for an award from those assets to "maintain or defend" a divorce proceeding, and these awards would be treated as community debts and considered in the overall distribution scheme. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

Attorney fees incurred by either spouse prior to the decree of divorce are presumed to be community debts, thus, the trial court is not faced with a discretionary choice on whether to classify attorney fees incurred prior to the decree of divorce as community debts; rather, the trial court will factually determine whether any fees have been incurred and the amount. Such fees must be satisfied out of the community property prior to equitable division and distribution of the property, and the overall allocation of attorney fees, like other community debts, is left to the discretion and general equitable power of the trial court, subject to the requirement of a substantially equal division unless circumstances require an unequal division. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

The rule that pre-divorce attorney fees must be treated as community debts has been statutorily set aside. *Jensen v. Jensen*, 124 Idaho 162, 857 P.2d 641 (1993).

#### Award of Temporary Maintenance.

Temporary support paid during pendency of divorce action should be paid to wife in addition to her own sources of income to maintain her according to her former manner of living. *Speer v. Quinlan*, 96 Idaho 119, 525 P.2d 314 (1974). (Decision prior to 1980 amendment).

Where the action was "pending" within the meaning of this section while it was upon remand, the statute authorized the district court to award wife alimony for the time preceding the entry of final judgment. *Parker*



v. Parker, 97 Idaho 209, 541 P.2d 1177 (1975).

Where wife had no control over whether the trial court would dispose of her request for alimony before or after it entered final judgment, the time for such request rather than the time the request was granted determined whether the trial court was authorized to award alimony under this section after final judgment had been entered. *Parker v. Parker*, 97 Idaho 209, 541 P.2d 1177 (1975).

### **Child Support.**

Where both parties testified to a higher amount as reasonably required for child support, between \$150 and \$250 per month, award less than \$150 per month for the child support was set aside. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

In a divorce action, it was proper for the district court to allow delinquent temporary child support to be used as an offset against the community property before distribution. *Fisher v. Fisher*, 104 Idaho 68, 656 P.2d 129 (1982).

### **Construction.**

By term "while an action for divorce is pending" is meant any time from commencement of suit until and including final order disposing of same. *Taylor v. Taylor*, 33 Idaho 445, 196 P. 211 (1921); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

This is only statutory authority for allowances herein provided, and, where judgment has become final, there is no action pending to sustain application. *Mathers v. Mathers*, 40 Idaho 189, 232 P. 573 (1924).

### **Determining Amount.\***

In determining amount of allowance, court should take into consideration the wealth and social standing of the parties, their manner of living, present available means of wife, and ability and income of husband, her health and probable needs while suit is pending, as well as all other circumstances which may aid court in determining amount necessary to maintain wife during the suit, according to her former manner of living. *Day v. Day*, 15 Idaho 107, 96 P. 431 (1908). (Decision prior to 1980 amendment).

Where marriage of parties is admitted, in determining amount of alimony court should attempt to place each party in the position that neither should have advantage of the other in waging suit nor in presenting evidence to prove or disprove the falsity of allegations made. *Day v. Day*, 15 Idaho 107, 96 P. 431 (1908).

In taking evidence for purpose of fixing amount of attorney's fees, court is not trying issue in case, but is seeking information as basis for its order. It is not bound by rules of evidence applicable to contesting litigants.

*Smiley v. Smiley*, 46 Idaho 588, 269 P. 589 (1928).

In the exercise of the power to require a husband to maintain his wife pending divorce suit and pay her costs and attorney's fees, care should be taken that the requirement be not beyond his power to perform. *Bedke v. Bedke*, 56 Idaho 235, 53 P.2d 1175 (1935). (Decision prior to 1980 amendment).

In deciding the amount the husband should pay toward the separate maintenance and support of his family, the earning capacity of the wife, as well as that of the husband, should be taken into consideration. *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940). (Decision prior to 1980 amendment).

### **Discretion of Court.**

Allowance of alimony and counsel fees pending an action of divorce rests in sound discretion of trial court. *Wyatt v. Wyatt*, 2 Idaho (Hasb.) 236, 10 P. 228 (1886); *Morrison v. Morrison*, 38 Idaho 45, 221 P. 156 (1923); *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1924); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Where court had jurisdiction, the awarding of attorney's fees was a matter which rested within the discretion of the trial court. *Wilson v. Wilson*, 81 Idaho 375, 341 P.2d 894 (1959).

This section vests original jurisdiction in the district court in a proper case to require the husband during the pendency of an appeal from a judgment in a divorce case to pay such sums as may be necessary to prosecute or defend the action, and the question of whether an award should be made, and, if made, the issue as to the amount necessary to pay costs and attorney's fees on appeal are both addressed to the sound discretion of the trial court, and its order therein will not be reversed in the absence of an abuse of such discretion. *Losee v. Losee*, 91 Idaho 77, 415 P.2d 720 (1966). (Decision prior to 1980 amendment).

In the absence of a showing that wife was unable to finance divorce litigation and support herself, the trial court's limiting of temporary allowance when the wife found full-time employment and failure to make adjustment for wife's cost was not an abuse of the trial court's discretion under this section. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

In deferring to Supreme Court a decision on what husband should be required to pay for wife's attorney's fees on appeal, trial court failed to exercise discretion vested in it by this section. *McNett v. McNett*, 95 Idaho 59, 501 P.2d 1059 (1972).

Where plaintiff filed suit to enforce provisions in the parties' divorce decree allowing variable child support payments, and where

defendant then sought to modify the support schedule, the divorce action was pending and the district court therefore had discretion to award plaintiff any money necessary to enable her to prosecute or defend the action. *Lester v. Lester*, 99 Idaho 250, 580 P.2d 853 (1978).

Whether to allow attorney fees is within the discretion of the trial court, pursuant to this section. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Where the magistrate made specific findings of fact in exercising his discretion regarding the award of attorney fees and expert witness fees, he did not abuse his discretion in ordering that each party was responsible for his or her own respective attorney fees and that one party was responsible for the expert fees. *McAfee v. McAfee*, 132 Idaho 281, 971 P.2d 734 (Ct. App. 1999).

### **Effect of Denial.**

Where Supreme Court, upon application for suit money, temporary alimony, and attorneys' fees pending appeal, decided against such allowance, such decision is binding on subsequent appeal. *Mathers v. Mathers*, 42 Idaho 821, 248 P. 468 (1926).

### **Evidence.**

There was substantial and competent evidence to support the trial court's findings concerning an award of attorney's fees to spouse. *Mulch v. Mulch*, 125 Idaho 93, 867 P.2d 967 (1994).

### **Factors.**

Subsection (2) of this section did not intend the wholesale incorporation of every word of this section. *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).

### **Failure to Qualify.**

Since wife did not qualify under this section or § 32-705 because there was no showing of fault, lack of assets or inability to support herself by employment, magistrate court was correct in treating the \$1,000 monthly payment to the wife as a prejudgment distribution of a portion of the community property which would be awarded to the wife, and offset those distributions against the final award. *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

### **Fault.**

Although a showing of fault is required for an award of temporary maintenance under subsection (1) of this section, requiring a showing made in conformity with § 32-705, the trial court need only consider the factors set forth in § 32-705 in considering whether to award costs and attorney's fees to a party in a divorce action. *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).

### **Foreign Judgment.**

A judgment of the Colorado court directing a husband to pay a specified sum per month for the support and maintenance of his wife and minor child is a final judgment as to any instalments actually accrued, notwithstanding the judgment is subject to subsequent modification, and where no modification of a decree rendered by a court of a sister state has been actually made prior to the maturity of such instalments, the instalments already accrued under such a judgment constitute a debt which will support an action at law; and under art. IV, § 1 of the Constitution of the United States, such judgment is entitled to full faith and credit in an Idaho court. *Cormana v. Naron*, 37 Idaho 482, 217 P. 597 (1923).

### **Jurisdiction.**

Where appeal has been taken from judgment in a divorce case, district court still retains jurisdiction to make orders directing payment of costs, expenses and attorneys' fees, necessary in the preparation and perfection of appeal. *Roby v. Roby*, 9 Idaho 371, 74 P. 957 (1903); *Galbraith v. Galbraith*, 38 Idaho 15, 219 P. 1059 (1923); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Original jurisdiction in granting alimony and suit money is vested in district court and judges thereof at chambers. Supreme Court can exercise jurisdiction in such matters only where necessary to a complete exercise of its appellate jurisdiction. *Callahan v. Dunn*, 30 Idaho 225, 164 P. 356 (1917); *Enders v. Enders*, 34 Idaho 381, 201 P. 714 (1921); *Hay v. Hay*, 40 Idaho 624, 235 P. 902 (1925); *Vollmer v. Vollmer*, 43 Idaho 395, 253 P. 622 (1927); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Original jurisdiction in matter of granting alimony and suit money in connection with divorce actions is vested in district courts and judges thereof at chambers. *Enders v. Enders*, 34 Idaho 381, 201 P. 714 (1921); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Where divorce decree did not award alimony and it had become final by operation of law and the time for modification or amendment had expired, the district court was without jurisdiction to reopen the case and modify the decree. *McDonald v. McDonald*, 56 Idaho 444, 55 P.2d 827 (1936); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

The Supreme Court has no power of enforcing orders made in a divorce action and no jurisdiction over orders made in a district court except by reason of and through its appellate jurisdiction. *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

Trial court in divorce action retains jurisdiction to make orders for attorney's fees, costs and expenses necessary in the prepara-



tion and presentation of the appeal and enforcement of order of district court granting such allowance must come from the district court, the Supreme Court having no authority to enforce compliance with the orders of the district court. *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948).

A motion by appellant for support money, costs of appeal, and attorney fees filed one day prior to date for oral argument on appeal was not necessary to exercise of court's appellate jurisdiction, especially where affidavit stated that appellant was able to borrow the money required for the expenses. *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955).

Since, by virtue of § 1-2210, and IRCP, Rule 82(c)(2) and a rule of the third judicial circuit, lawyer magistrate had subject matter jurisdiction in divorce action, where, after holding a hearing on the matter he found that a common-law marriage existed and ordered defendant to pay alimony pendente lite and attorney fees, district court erred in issuing writ of prohibition forbidding any further action by the magistrate in the proceedings. *Freiburghaus v. Freiburghaus*, 100 Idaho 730, 604 P.2d 1209 (1980).

Pursuant to § 32-704, the district court has original jurisdiction in determining whether to require one spouse, during the pendency of an appeal from a judgment in a divorce action, to pay to the other spouse such sums as may be necessary for that spouse to prosecute or defend the action. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

### **Manner of Payment.**

There was no abuse of discretion by the trial court where the judge decided that the attorneys' fees of both parties were community debts and were to be satisfied out of the community property before the division, since the awarding and method of payment of attorney fees is a matter which is within the discretion of the trial court. *Brammer v. Brammer*, 93 Idaho 671, 471 P.2d 58 (1970).

Inasmuch as § 32-708 mandated that a court resort first to community property in making allowances for wife's attorney fees and temporary support, the trial court was in error in setting off the community interest in a separate property residence against the husband's previously decreed temporary support, attorney fee obligations and community debts. *Mifflin v. Mifflin*, 97 Idaho 895, 556 P.2d 854 (1976).

In a divorce proceeding, the trial court erred in failing to satisfy the award of attorney fees to the plaintiff wife from the total property owned by the community before dividing that property. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982).

Attorney's fees in divorce actions are community debts and are to be satisfied out of

community property prior to division of the property. Thus, the trial court erred when it first divided the community property and then awarded a wife her attorney's fees out of what had become, by judicial decree, the husband's separate property; the attorney's fee award should have been subtracted from the net community estate prior to its division. *Murphey v. Murphey*, 103 Idaho 720, 653 P.2d 441 (1982).

### **Misconduct as Affecting Allowance.**

Where attorney for wife was responsible for acts of extreme cruelty on her part which might be basis for divorce, husband was not required to pay for services of such attorney rendered in cause. *Callahan v. Callahan*, 33 Idaho 241, 192 P. 660 (1920).

Where a divorced wife's continued wilful disobedience of the visitation decree of the court occasioned the repeated applications by her former husband for help of the court in securing the right of visitation, such divorced wife was not entitled to an order having the effect of requiring her former husband to finance her defense in litigation resulting solely from her contemptuous conduct. *Kirkwood v. Kirkwood*, 83 Idaho 444, 363 P.2d 1016 (1961).

### **Remarriage.**

Where husband and wife, in contemplation of divorce, entered into property settlement agreement, and wife in subsequent uncontested divorce was awarded \$35 per month during her lifetime, subsequent remarriage of wife relieved husband of all further payments as of the date of said marriage. *McHan v. McHan*, 59 Idaho 496, 84 P.2d 984 (1938).

### **Settlement Agreements.**

Existence of property settlement between husband and wife does not prevent allowance of suit money in action for divorce. *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1924).

### **Settlement Contracts.**

Husband would not be guilty of contempt for breach of contract to pay alimony, by failure to make a payment which the court had not ordered him to make but the amounts of which and the time they were to be made were fixed by a contract entered into between the parties after their divorce. *McDonald v. McDonald*, 55 Idaho 102, 39 P.2d 293 (1936).

A husband and wife may contract for the allowance of suit money to the wife. *Reeves v. Andersen*, 89 Idaho 512, 406 P.2d 812 (1965).

### **Statement of Factors Considered.**

Under this section the court may order a party to pay a reasonable amount for attorney fees if it reviews the financial resources of the parties and the factors set forth in § 32-705, but in order to make the award under this section, the court must consider and cite fac-



tors listed in § 32-705 in its decision and where magistrate failed to identify any statute or contractual provision on which an award of attorney fees was based, an award of fees was not proper under these sections. *Noble v. Fisher*, 126 Idaho 885, 894 P.2d 118 (1995).

When awarding attorney fees pursuant to this section, a trial court must make specific findings on the factors listed in § 32-705 to justify granting a motion for attorney fees; similarly, a trial court must also apply the same requirements and consider the same factors when denying a motion for attorney fees. *Antill v. Antill*, 127 Idaho 954, 908 P.2d 1261 (Ct. App. 1996).

#### **Suspension of Payments.**

Court has power to make order authorizing husband to withhold alimony payments until further order though the persons having custody of the fund be not made parties to the

suit. *McDonald v. McDonald*, 55 Idaho 102, 39 P.2d 293 (1934).

**Cited in:** *Meredith v. Meredith*, 91 Idaho 898, 434 P.2d 116 (1967); *Evans v. Evans*, 92 Idaho 911, 453 P.2d 560 (1969); *Wyatt v. Wyatt*, 95 Idaho 391, 509 P.2d 1312 (1973); *Pratt v. Pratt*, 99 Idaho 500, 584 P.2d 645 (1978); *Koester v. Koester*, 99 Idaho 54, 586 P.2d 1370 (1978); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981); *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985); *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985); *Simonovich v. Simonovich*, 110 Idaho 639, 713 P.2d 445 (Ct. App. 1985); *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986); *Harney v. Weatherby*, 116 Idaho 904, 781 P.2d 241 (Ct. App. 1989); *Holmes v. Holmes*, 125 Idaho 784, 874 P.2d 595 (Ct. App. 1994); *Balderson v. Balderson*, 127 Idaho 48, 896 P.2d 956 (1995); *Smith v. Smith*, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998).

### **RESEARCH REFERENCES**

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, §§ 652 et seq., 697 et seq.

**C.J.S.** — 27B C.J.S., Divorce, §§ 510 et seq.

**A.L.R.** — Necessity of notice of application for temporary custody of child. 31 A.L.R.3d 1378.

Retrospective increase in allowance for alimony, separate maintenance, or support. 52 A.L.R.3d 156.

Wife's possession of independent means as affecting her right to alimony pendente lite. 60 A.L.R.3d 728.

Wife's possession of independent means as

affecting her right to child support pendente lite. 60 A.L.R.3d 832.

Excessiveness or adequacy of money awarded as child support. 27 A.L.R.4th 864.

Excessiveness or adequacy of amount of money awarded for alimony and child support. 27 A.L.R.4th 1038.

Court's authority to award temporary alimony or suit money in action for divorce, separate maintenance, or alimony where the existence of a valid marriage is tested. 34 A.L.R.4th 814.

Excessiveness or adequacy of attorneys' fees in domestic relations cases. 17 A.L.R.5th 366.

**32-705. Maintenance.** — 1. Where a divorce is decreed, the court may grant a maintenance order if it finds that the spouse seeking maintenance:

- (a) Lacks sufficient property to provide for his or her reasonable needs; and
- (b) Is unable to support himself or herself through employment.

2. The maintenance order shall be in such amounts and for such periods of time that the court deems just, after considering all relevant factors which may include:

- (a) The financial resources of the spouse seeking maintenance, including the marital property apportioned to said spouse, and said spouse's ability to meet his or her needs independently;
- (b) The time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to find employment;
- (c) The duration of the marriage;
- (d) The age and the physical and emotional condition of the spouse seeking maintenance;

- (e) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance;
- (f) The tax consequences to each spouse;
- (g) The fault of either party. [I.C., § 32-705, as added by 1980, ch. 378, § 4, p. 961; am. 1990, ch. 336, § 1, p. 916.]

### STATUTORY NOTES

**Prior Laws.** — Former § 32-705, was amended and renumbered as § 32-717 by S.L. 1980, ch. 378, § 3.

### JUDICIAL DECISIONS

#### ANALYSIS

Award of community property.  
 Basis for award.  
 Costs and attorney's fees.  
   — Financial need.  
   — Not appropriate.  
   — Not awarded.  
 Discharge under Bankruptcy Code.  
 Educational expenses.  
 Failure to qualify.  
 Fault.  
 Fault grounds.  
 Findings upheld.  
 In general.  
 Prospective operation of amendment.  
 Restitution.  
 Standard of review.  
 Statement of factors considered.  
 Support.  
 Wife not entitled to maintenance.

#### **Award of Community Property.**

There was substantial and competent evidence to support an award of spousal maintenance, despite the award of community property to wife. *Mulch v. Mulch*, 125 Idaho 93, 867 P.2d 967 (1994).

#### **Basis for Award.**

The court did not err in granting support plus educational expenses to the wife, where the court found that the wife's personal property and her share of community property were insufficient to meet her needs and that the wife was unable to support herself through employment. *Shurtliff v. Shurtliff*, 112 Idaho 1031, 739 P.2d 330 (1987).

The award of attorney fees in divorce actions and marital property divisions has long been the province of the trial court and the court is also bound by the standard pronounced in § 32-704 and this section. *Beesley v. Beesley*, 114 Idaho 432, 758 P.2d 695 (1988).

Where it was found that 48 year old spouse was the "innocent spouse"; that she lacked sufficient property to support herself; that she could not obtain employment at the time of

the divorce because her medical technician skills were outdated; and that it would take approximately two to three years for her to retrain herself and these findings were supported by substantial evidence, award of permanent alimony was correct. *McNelis v. McNelis*, 119 Idaho 349, 806 P.2d 442 (1991).

The standard applied by the magistrate inappropriately focused upon wife's financial position existing prior to her marriage but what lifestyle would have been warranted in light of the spouses' incomes and resources during the marriage should have been considered. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991).

There was substantial and competent evidence to support the trial court's consideration of husband's overtime wages. *Mulch v. Mulch*, 125 Idaho 93, 867 P.2d 967 (1994).

Where evidence showed that 51-year-old wife had spent 28 of her 31 years of marriage as a homemaker and was just attempting to reenter the job market, had received a degree and teaching certificate and although only working part-time at the time of the divorce was capable of obtaining full-time employ-



ment but there were not permanent employment prospects in the near future, she met burden under this section by showing that she lacked reasonable property to provide for her reasonable needs and was unable to support herself through employment and award of maintenance was proper; however, such award should not be permanent but only be granted for a period of three years to allow her time to obtain full-time employment and establish herself financially. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

The court did not err in awarding wife three years of maintenance where it took into account the wife's ability to meet her needs independent of any spousal support and the husband's ability to meet his own needs while also meeting the wife's needs. *Robinson v. Robinson*, 136 Idaho 451, 35 P.3d 268 (2001).

### **Costs and Attorney's Fees.**

The trial court may, pursuant to § 32-704, make awards of costs and attorney fees in post-divorce decree proceedings. The financial resources of the parties must first be considered and then the factors under this section must be considered and applied. Because there is no "community" in post-divorce decree proceedings, community property is not liable for these awards. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

Where the trial court found that wife did not have adequate resources to pay her attorney fees incurred in divorce action, where it found that husband had sufficient assets to pay for psychological treatment for the children and that wife did not, where it took notice of the fact that husband had the ability to pay attorney fees incurred in the enforcement of a maintenance order and that wife did not, and, where the court found that husband had the capacity to make previously ordered support payments when it found him in contempt for failure to pay them, the court must make it clear whether those findings were made in the context of this section regarding award of costs and attorney's fees. *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).

For a court to award attorney fees under § 32-704(2), it must consider the financial resources of the parties and the factors in this section. *Bell v. Bell*, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992).

Where trial court did not cite the factors listed in this section as a basis for including wife's attorney fees as part of the community debt, trial court's award was reversed and remanded. *Smith v. Smith*, 124 Idaho 431, 860 P.2d 634 (1993).

Where the magistrate made specific findings of fact in exercising its discretion regard-

ing the award of attorney fees and expert witness fees, he did not abuse his discretion in ordering that each party was responsible for his or her own respective attorney fees and that one party was responsible for the expert fees. *McAffee v. McAfee*, 132 Idaho 281, 971 P.2d 734 (Ct. App. 1999).

Trial court did not abuse its discretion in awarding attorney fees as the husband earned approximately 84 percent of the parties' combined income and also owned investment and income-producing property; although the wife was awarded assets of a significant value in the divorce, many of the assets, such as the house and other real property, were not liquid. *Stephens v. Stephens*, 138 Idaho 195, 61 P.3d 63 (Ct. App. 2002).

### **—Financial Need.**

Where magistrate's decision indicated that he had reviewed the factors set forth in § 32-704 and in this section, and found that each party had sufficient property and employment to provide for his or her reasonable needs, he did not abuse his discretion in denying attorney fees to mother pursuant to section 32-704. *Jensen v. Jensen*, 128 Idaho 600, 917 P.2d 757 (1996).

The magistrate did not abuse its discretion in awarding attorney fees pursuant to § 32-704(3) where the magistrate found that a substantial disparity existed between the incomes of the parties, that the wife was incapable of paying her own attorney fees, and that the husband could afford to pay those fees for her, and these findings were supported by substantial and competent evidence contained in the record. *Perez v. Perez*, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000).

Where there was adequate evidence presented to demonstrate a disparity in incomes relating to the parties' abilities to carry on an appeal of a child custody award, the magistrate judge was within his discretion in ordering the father to pay a portion of the mother's attorney fees. The mother was not able to make ends meet and pay her attorney fees at the same time. The magistrate erred in making it an open-ended award without any determination about what a reasonable attorney fee would be. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

### **—Not Appropriate.**

In a proceeding to modify a divorce decree, where it was determined that the defenses of the party objecting to the proposed modification were not pursued or defended frivolously, unreasonably or without foundation and where the magistrate's decision did not apply the factors set forth in this section, the magistrate's decision to award attorney fees was in error and could not be upheld. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).



**—Not Awarded.**

Where the trial court found that wife was able to support herself through employment and she was underemployed and where husband did not have the ability to pay wife's attorney fees because he was supporting another family and would be paying increased child support, the trial court did not abuse its discretion by refusing to award attorney fees to wife. *Ireland v. Ireland*, 123 Idaho 955, 855 P.2d 40 (1993).

**Discharge Under Bankruptcy Code.**

Award in divorce proceeding of amount of money as "equitable restitution" as compensation for ex-wife's support of ex-husband during medical school was not in the nature of support under Bankruptcy Code, 11 U.S.C. § 523(a)(5), and was therefore dischargeable. *Hainline v. Neal*, 179 Bankr. 234 (Bankr. D. Idaho 1995).

**Educational Expenses.**

Although the spousal maintenance provisions of this section do not contemplate burdening the husband with unlimited schooling expenses for such purposes as cultural refinement or excessively expensive curricula, this section does contemplate that there are situations where initial higher spousal support levels are justified for retraining purposes where such training would tend to facilitate the achievement of enhanced earning capacity and early return to economic self-sufficiency. *Shurtliff v. Shurtliff*, 112 Idaho 1031, 739 P.2d 330 (1987).

**Failure to Qualify.**

Since wife did not qualify under this section or § 32-704 because there was no showing of fault, lack of assets or inability to support herself by employment, magistrate court was correct in treating the \$1,000 monthly payment to the wife as a prejudgment distribution of a portion of the community property which would be awarded to the wife, and offset those distributions against the final award. *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

**Fault.**

Although a showing of fault is required for an award of temporary maintenance under § 32-704(1), requiring a showing made in conformity with this section, the trial court need only consider the factors set forth in this section in considering whether to award costs and attorney's fees to a party in a divorce action. *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).

An award of maintenance requires initially a finding by the court that the party being charged with maintenance is at fault and the party seeking maintenance is an innocent spouse, to be followed by consideration of the

need of the party seeking maintenance. *Marmon v. Marmon*, 121 Idaho 480, 825 P.2d 1136 (Ct. App. 1992).

Prior to the amendment of this section in 1990, the fault of the other party was a prerequisite to an award of maintenance to be applied retroactively; the 1990 amendments were meant to eliminate fault as a prerequisite, relegating it to one of many factors to be considered. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

**Fault Grounds.**

Because the parties were not separated for at least one year prior to the filing of wife's counterclaim for divorce on the ground of wilful desertion, the court erred in granting the divorce on that basis. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991) (decision prior to 1990 amendment).

**Findings Upheld.**

Even though the magistrate judge did not specify how he calculated the duration and the amount of spousal maintenance award, the judge's decision was affirmed because the record contained substantial and competent evidence to support the judge's findings as to duration and the amount of the award. *Wilson v. Wilson*, 131 Idaho 533, 960 P.2d 1262 (1998).

**In General.**

Where an appeal in a divorce case is brought frivolously and without foundation, an appellate court may award fees under § 12-121. In such a case, the amount awarded is fixed by reference to Rule 54(e)(3), I.R.C.P. which enables the judge to consider the factors listed in this section and incorporated by reference into § 32-704(2). In this way § 12-121 plays a role in divorce cases without unduly encroaching upon the financial assistance scheme contemplated by § 32-704(2). *Hentges v. Hentges*, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Section 32-704(2) did not intend the wholesale incorporation of every word of this section. *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).

**Prospective Operation of Amendment.**

This section was revised in 1990 to remove fault as a requirement for the award of alimony and to denote, as the primary basis for alimony awards, the need of one spouse and the ability of the other spouse to pay. However, unless the terms of a statute show a clear legislative intent that it should be applied retroactively, a statute should have a prospective operation only. *Marmon v. Marmon*, 121 Idaho 480, 825 P.2d 1136 (Ct. App. 1992).

### Restitution.

By including restitution as one of the factors on which to base the maintenance order, the magistrate exceeded his authority under former subsection (2). *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991) (decision prior to 1990 amendment).

### Standard of Review.

Subsection (2) of this section does not indicate that the trial court has more discretion to determine the amount of a spousal maintenance award than it does to determine the duration of the award; therefore, the substantial and competent evidence standard of review must be applied to both the amount of an award and the duration of an award. *Mulch v. Mulch*, 125 Idaho 93, 867 P.2d 967 (1994).

### Statement of Factors Considered.

Trial judges in divorce cases should state reasons for their decisions on disputed child support and attorney fee issues, unless those reasons are otherwise obvious from the record; the statement need not be lengthy and it may only consist of brief remarks in open court. But regardless of form, the statement at a minimum should note the existence of the legislative guidelines and should identify those factors which the judge has weighed in arriving at his decision. *Bailey v. Bailey*, 107 Idaho 324, 689 P.2d 216 (Ct. App. 1984).

Under § 32-704 the court may order a party to pay a reasonable amount for attorney fees if it reviews the financial resources of the parties and the factors set forth in this section, but in order to make the award under § 32-704, the court must consider and cite factors listed in this section in its decision and where magistrate failed to identify any statute or contractual provision on which an award of attorney fees was based, an award of fees was not proper under these sections. *Noble v. Fisher*, 126 Idaho 885, 894 P.2d 118 (1995).

When awarding attorney fees under § 32-704, a trial court must make specific findings on the factors listed in this section to justify granting a motion for attorney fees; similarly,

a trial court must also apply the same requirements and consider the same factors when denying a motion for attorney fees. *Antill v. Antill*, 127 Idaho 954, 908 P.2d 1261 (Ct. App. 1996).

### Support.

Where the issue before the court was whether a debt owed by a former wife to her former husband under a support order issued by a Canadian court was dischargeable under 11 U.S.C.S. § 523(a), the former wife's argument regarding any possible entitlement to spousal support from the former husband under § 32-705(1) was irrelevant because the court was not determining the propriety of the Canadian court's modification of a divorce order nullifying past due child payments owed by the former husband, nor was it interpreting the separation agreement or the divorce order to determine if the child support was truly child support and not spousal support or a property settlement. *Purviance v. Region 1 Self Reliance Program (In re Purviance)*, — Bankr. — (Bankr. D. Idaho June 9, 2005).

### Wife Not Entitled to Maintenance.

In a divorce action, the magistrate did not abuse his discretion in failing to award the wife continuing separate maintenance, because the wife could meet her monthly expenses through employment in conjunction with her share of the husband's retirement plan and the equity in her house. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

**Cited in:** *Compton v. Compton*, 101 Idaho 328, 612 P.2d 1175 (1980); *Donndelinger v. Donndelinger*, 107 Idaho 431, 690 P.2d 366 (Ct. App. 1984); *Sherry v. Sherry*, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985); *Le Vine v. Spickelmier*, 109 Idaho 341, 707 P.2d 452 (1985); *Simonovich v. Simonovich*, 110 Idaho 9, 713 P.2d 445 (Ct. App. 1985); *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986); *Balderson v. Balderson*, 127 Idaho 48, 896 P.2d 956 (1995); *Reed v. Reed*, 137 Idaho 53, 44 P.3d 1108 (2002); *Robinson v. Robinson*, 136 Idaho 451, 35 P.3d 268 (2001).

## DECISIONS UNDER PRIOR LAW

### ANALYSIS

Constitutionality.

Discretion of court.

In general.

Manner of payment.

Modification.

Res judicata.

Review.

Salary increase.

Sufficiency of alimony.



**Constitutionality.**

Although former § 32-706, insofar as it authorized alimony solely for wives, was unconstitutional, the proper remedy for the constitutional defect was not to nullify the statute entirely, but rather to extend to husbands the right to receive alimony when the other requirements of the statute were satisfied; therefore, a wife's claim to alimony based on the then existing § 32-706 was not barred on grounds that the statute unconstitutionally denied equal protection to husbands. *Neveau v. Neveau*, 103 Idaho 707, 652 P.2d 655 (Ct. App. 1982).

Former § 32-706, which allowed awards of alimony to wives only, clearly violated the equal protection clauses of both the Idaho Constitution and the United States Constitution. However, since it was apparent that the legislature would have intended that the benefits of the alimony statute be extended to the excluded class, husbands, rather than taken from the benefitted class, wives, the Supreme Court would give effect to that legislative intent by neutrally extending the benefits of alimony to needy husbands rather than voiding former § 32-706 in its entirety. *Murphey v. Murphey*, 103 Idaho 720, 653 P.2d 441 (1982).

**Discretion of Court.**

While allowance of alimony is matter of discretion with trial court, yet such discretion is reviewable on appeal, and where it has been abused, alimony will be allowed by appellate court. *Enders v. Enders*, 36 Idaho 481, 211 P. 549 (1922).

In determining amount of permanent alimony to be awarded, no fixed rule can be applied. Amount is largely in discretion of trial court and will not be disturbed save in cases of manifest abuse. *Smiley v. Smiley*, 46 Idaho 588, 269 P. 589 (1928).

The allowance of alimony and the amount thereof are, in the first instance, committed to the trial court's discretion and will not be interfered with on appeal in the absence of a manifest abuse thereof. *Malone v. Malone*, 64 Idaho 252, 130 P.2d 674 (1942).

Alimony is not a vested right, being designed solely for support of the wife; it is granted at the court's discretion and is subject to modification. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

Allowance of alimony and the amount thereof are, in the first instance, committed to the trial court's discretion. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

Whether alimony is to be granted or not under this section is a matter first committed to the discretion of the trial court and will not be interfered with on appeal in the absence of a manifest abuse thereof. *Losee v. Losee*, 91 Idaho 77, 415 P.2d 720 (1966).

It was not an abuse of discretion to deny alimony to the wife, who was trained as a secretary and bookkeeper and capable of working to support herself and to whom the court awarded \$53,000 of \$77,000 community property. *Loveland v. Loveland*, 91 Idaho 400, 422 P.2d 67 (1967).

An award of alimony to a divorced wife in such amount as the trial court deems just is proper whenever the husband is not free from fault, and the wife's fault, though possibly sufficient to allow a divorce in favor of the husband, is not so grievous as to mandate a denial of alimony. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

The awarding of alimony where a divorce is granted for the fault of the husband is, in the first instance, in the discretion of the district court, and such discretion will not be interfered with on appeal in the absence of manifest abuse. *Glavin v. Glavin*, 94 Idaho 813, 498 P.2d 1286 (1974).

The trial court abused its discretion in awarding to the plaintiff wife \$210,000 in alimony over a nine-year period, where there was no showing of need in that the wife had already been awarded over \$300,000 worth of community property and the evidence also showed that she was a college graduate capable of obtaining employment. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982).

**In General.**

In this state, award of alimony is not considered as an award of community property, the two being separate and distinct. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

**Manner of Payment.**

Permanent alimony may be awarded either in lump sum or in stipulated amounts, payable at fixed dates. *Enders v. Enders*, 36 Idaho 481, 211 P. 549 (1922).

**Modification.**

Power over subject matter of alimony is not exhausted by entry of original order and decree of divorce, but is continued for the purpose, at any time, of making such alterations as may appear to the court, in the exercise of its judicial discretion, reasonable and proper. *Humbird v. Humbird*, 42 Idaho 29, 243 P. 827 (1926); *McHan v. McHan*, 59 Idaho 496, 84 P.2d 984 (1938).

In fixing alimony, court may regard earnings of husband and may subsequently increase or reduce amount. *Humbird v. Humbird*, 42 Idaho 29, 243 P. 827 (1926).

Payment of \$200 per month alimony should continue until such time as it is shown to the court that appellant is no longer in need of alimony or that circumstances and conditions of the parties warrant a modification. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

The authority to modify under this section



cannot be extended to modification of an agreement of the parties; for only when there has been a merger of the agreement into the decree itself does the court have the authority to make such a modification, and any modification is then of the court's order and not of the agreement. *Turner v. Turner*, 90 Idaho 308, 410 P.2d 648 (1966).

Where decree of divorce provided for monthly payments to wife "for the rest of her natural life," the words "for the rest of her natural life" must be regarded as surplusage because the decree may be modified. *Gortsema v. Gortsema*, 92 Idaho 684, 448 P.2d 777 (1968).

Where the decree contains no provision for an award of alimony, no modification of decree can be made once the time for appeal has elapsed. *Perovitz v. Perovitz*, 94 Idaho 453, 490 P.2d 320 (1971).

Under the alimony provision of former § 32-706 (repealed) that "the court may, from time to time, modify its orders in these respects," Idaho case law had long held that when the original divorce decree contained no provision for an award of alimony, a court had no authority to subsequently modify that decree to provide for an award of alimony. *Mercer v. Mercer*, 102 Idaho 816, 641 P.2d 1003 (Ct. App. 1982).

Where there was no formal provision in a divorce decree retaining jurisdiction, the court did not have the jurisdiction to modify fixed-term spousal support after the expiration of the term. *Mercer v. Mercer*, 102 Idaho 816, 641 P.2d 1003 (Ct. App. 1982).

A trial court ordinarily was without power to modify an alimony award beyond the duration of the time fixed by the original decree for payment of alimony, provided that those payments had been made and there had been no appeal from the final decree which declared the obligation, and fixed its limited duration. *Mercer v. Mercer*, 102 Idaho 816, 641 P.2d 1003 (Ct. App. 1982).

When an original divorce decree providing for alimony was modified by an order terminating alimony payments and no appeal was taken from that order, there was no residual authority in the trial court to later on allow alimony; there simply was no longer an action pending between the parties and hence the parties were no longer before the court. *Mercer v. Mercer*, 102 Idaho 816, 641 P.2d 1003 (Ct. App. 1982).

### **Res Judicata.**

Where a previous order terminating alimony payments has become final, the time for amendment having expired with no appeal

taken, trial court was without power to modify it, having no residual authority to do so; therefore, trial court correctly granted a motion to dismiss a motion to modify. *Jordan v. Jordan*, 87 Idaho 432, 394 P.2d 163 (1964).

### **Review.**

When a major portion of an award is found to have been made erroneously, it is only equitable that the trial court review the disposition of the community property and the allowance of the wife's support so that ultimate disposition of the property is fairly and equitably made with adequate allowance for the wife's support. *Stahl v. Stahl*, 91 Idaho 794, 430 P.2d 685 (1967).

### **Salary Increase.**

A salary increase of a divorced husband, to become effective approximately 3½ months after the trial, should have been considered by the court in awarding alimony and child support. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

### **Sufficiency of Alimony.**

In suit by husband, a resident of Canada, against wife, a resident of Michigan, for divorce based on five years' separation, where evidence showed that wife helped husband to develop his business and where husband had a business valued at \$27,000 and wife lived in a "shack" and had borrowed \$1,400 to come to Idaho to defend proceeding, an award of alimony for \$2,000 was insufficient, and Supreme Court increased award to \$8,000. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

Alimony is not a vested right but is designed solely for the support of the wife; it is granted at the court's discretion and is subject to modification. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

Under the circumstances, the sum of \$200.00 per month as alimony was adequate; however, it was error to limit the alimony payments to a period of one year, as such termination would necessarily rest on speculation or conjecture and was unwarranted. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

In awarding alimony, the court should give due consideration to the correlative needs and abilities of both parties. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

The trial court did not err in denying wife an award of permanent alimony, where the trial court had given due consideration to the needs and abilities of the parties and the equity of the situation. *Mifflin v. Mifflin*, 97 Idaho 895, 556 P.2d 854 (1976).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 750 et seq.

**C.J.S.** — 27B C.J.S., Divorce, § 591 et seq.

**A.L.R.** — Propriety and effect of undivided award for support of more than one person. 2 A.L.R.3d 596.

Court's establishment of trust to secure alimony or child support in divorce proceedings. 3 A.L.R.3d 1170.

Validity and construction of provisions for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Spouse's acceptance of payments under alimony or property settlement or child support provisions of divorce judgment as precluding appeal therefrom. 29 A.L.R.3d 1184.

Annulment of later marriage as reviving prior husband's obligation under alimony decree or separation agreement. 45 A.L.R.3d 1033.

Consideration of tax liability or consequences in determining alimony or property settlement provisions of divorce or separation. 51 A.L.R.3d 461; 9 A.L.R.5th 568.

Retrospective increase in allowance for alimony, separate maintenance, or support. 52 A.L.R.3d 156.

Effect of remarriage of spouses to each other on permanent alimony provisions in final divorce decree. 52 A.L.R.3d 1334.

Power of court to modify decree for alimony or support to spouse which was based on agreement of parties. 61 A.L.R.3d 520.

Right to allowance of permanent alimony in connection with decree\* of annulment. 81 A.L.R.3d 281.

Statute expressly allowing alimony to wife, but not expressly allowing alimony to husband, as unconstitutional sex discrimination. 85 A.L.R.3d 940.

Adulterous wife's right to permanent alimony. 86 A.L.R.3d 97.

Fault as consideration in alimony, spousal support, or property division awards pursuant to no-fault divorce. 86 A.L.R.3d 1116.

Divorced woman's subsequent sexual relations or misconduct as warranting, alone or with other circumstances, modification of alimony decree. 98 A.L.R.3d 453.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 4 A.L.R.4th 1294.

Laches or acquiescence as defense, so as to bar recovery of arrearages of permanent alimony or child support. 5 A.L.R.4th 1015.

Validity and enforceability of escalation clause in divorce decree relating to alimony and child support. 19 A.L.R.4th 830.

Excessiveness or adequacy of amount of money awarded for alimony and child support combined. 27 A.L.R.4th 1038.

Excessiveness or adequacy of amount of money awarded as permanent alimony following divorce. 28 A.L.R.4th 786.

Reconciliation as affecting decree for limited divorce, separation, alimony, separate maintenance, or spousal support. 36 A.L.R.4th 502.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Propriety of equalizing income of spouses through alimony awards. 102 A.L.R.5th 395.

**32-706. Child support.** — (1) In a proceeding for divorce or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support and education until the child is eighteen (18) years of age, without regard to marital misconduct, after considering all relevant factors which may include:

- (a) The financial resources of the child;
- (b) The financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist;
- (c) The standard of living the child enjoyed during the marriage;
- (d) The physical and emotional condition and needs of the child and his or her educational needs;
- (e) The availability of medical coverage for the child at reasonable cost;
- (f) The actual tax benefit recognized by the party claiming the federal child dependency exemption.



(2) If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, and after considering all relevant factors which include those set forth in subsection (1) of this section, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.

(3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

(4) In a proceeding for the support of a child or a minor parent the court may order the parent(s) of each minor parent to pay an amount reasonable or necessary for the support and education of the child born to the minor parent(s) until the minor parent is eighteen (18) years of age, after considering all relevant factors which may include:

- (a) The financial resources of the child;
- (b) The financial resources of the minor parent;
- (c) The financial resources, needs and obligations of the parent of the minor parent;
- (d) The physical and emotional condition and needs of the child and his or her educational needs; and
- (e) The availability of medical coverage for the child at reasonable cost.

(5) The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification guidelines that utilize and implement the factors set forth in subsections (1) through (4) of this section to create a uniform procedure for reaching fair and adequate child support awards. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court. When adopting guidelines, the supreme court shall provide that in a proceeding to modify an existing award, children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered. [I.C., § 32-706, as added by 1980, ch. 378, § 5, p. 961; am. 1986, ch. 222, § 4, p. 593; am. 1989, ch. 411, § 1, p. 1003; am. 1990, ch. 410, § 1, p. 1137; am. 1996, ch. 430, § 1, p. 1462; am. 1998, ch. 292, § 5, p. 928; am. 2000, ch. 107, § 1, p. 236; am. 2000, ch. 412, § 1, p. 1305.]

#### STATUTORY NOTES

**Cross References.** — Child support hearings, I.R.C.P. 6(c)(5).

**Prior Laws.** — A former § 32-706 which

comprised 1875, p. 639, § 7; R.S., § 2474; reen. R.C. & C.L., § 2664; C.S., § 4644; I.C.A., § 31-706; am. 1945, ch. 125, § 2, p.



191, was repealed by S.L. 1980, ch. 378, § 1.

**Amendments.** — This section was amended by two 2000 acts — ch. 107, § 1 and ch. 412, § 1, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 107, added subsection (5).

The 2000 amendment, by ch. 412, § 1, in subsection (5), added the last sentence.

## JUDICIAL DECISIONS

### ANALYSIS

Imputed income.

Incarcerated parent.

Income tax dependency exemption.

— Waiver.

Modification.

Reinstatement.

Statement of factors considered.

Support after majority.

### Imputed Income.

The magistrate correctly imputed monthly income to wife as a voluntarily unemployed parent pursuant to the child support guidelines. *Kornfield v. Kornfield*, 134 Idaho 383, 3 P.3d 61 (Ct. App. 2000).

### Incarcerated Parent.

Imposing upon incarcerated parent a continuing support obligation, beyond his ability to pay, does not help the child; therefore, the parent is not liable for child support payments while incarcerated on an unrelated criminal conviction. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

### Income Tax Dependency Exemption.

Although it may be debated whether child support levels should be fixed by reference to factors other than need and ability to pay, it is permissible under federal law and this section to take the value of the income tax dependency exemption into account, thereby indirectly allocating its economic value between the parties. *Rohr v. Rohr*, 118 Idaho 698, 800 P.2d 94 (Ct. App. 1989).

### — Waiver.

A magistrate court may, and is authorized by the current version of this section to, take account of the value of the income tax dependency exemption, and allocate its effect when it makes an initial or modified child support order. Nonetheless, the authority to require execution of a tax exemption waiver is an alternative which the divorce courts of this state should have available to utilize under the proper circumstances. *Rohr v. Rohr*, 118 Idaho 689, 800 P.2d 85 (1990).

### Modification.

Determining whether the child support provisions of a divorce decree should be modified essentially is a two-step process; first, the trial court must determine whether a sub-

stantial, material change of circumstances has occurred warranting a modification; second, the trial court must determine the amount of the modification, considering all relevant factors, especially those enumerated in this section. *Howard v. Mecham*, 117 Idaho 542, 789 P.2d 538 (Ct. App. 1990).

Magistrate may not modify child support where there was no basis for the modification other than that it appeared to conform with certain proposed guidelines that were not in effect at the time of the proposed modification and which, in fact, were not eventually adopted. *Howard v. Mecham*, 117 Idaho 542, 789 P.2d 538 (Ct. App. 1990).

Trial court abused its discretion in determining the amount of increase in child support ordered and in requiring such payments to be made retroactively from the date of filing of motion to modify the child support award, since its order was based on figure used by parent requesting a change in custody based on expenses that would come about as a result of change in custody. No change in custody occurred and, therefore, such figure was irrelevant and did not provide a rational basis for the trial court's decision. *Levin v. Levin*, 122 Idaho 583, 836 P.2d 529 (1992).

Where magistrate's order finding a material, permanent and substantial change in circumstances and increasing child support payments was based partially upon its erroneous collateral attack upon the prior court's support order, the magistrate's finding was vacated and the court was directed to reconsider the issue of whether there was a material, permanent and substantial change in the circumstances relating to child support. *Levin v. Levin*, 122 Idaho 583, 836 P.2d 529 (1992).

A person seeking modification of a divorce decree provision for child support must show a substantial and material change of circumstances occurring after the last order affecting the support obligation. When presented with

such a request, the trial court must first determine whether a substantial, material change of circumstances has occurred warranting a modification. If a modification is found to be justified, the trial court must then determine the amount of the modification, considering all relevant factors, especially those enumerated in this section. *Rohr v. Rohr*, 126 Idaho 1, 878 P.2d 175 (Ct. App. 1994).

Where there was substantial, competent evidence in the record to support the magistrate's finding that a father's reduced gross income combined with the birth of another child by his current wife and that child's need for support constituted a permanent, material, and substantial change of circumstances since the last order modifying the divorce decree, there was no error in the magistrate's granting the father's petition for modification, despite the fact that the parties' divorce decree was contemporaneously the subject of an appeal before the Idaho Court of Appeals. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).

Although there was evidence of material and substantial change of circumstances warranting the magistrate's modification of the divorce decree, where the magistrate did not provide the methodology or calculations it used in concluding the father's monthly gross income and his total annual income, there was no substantial and competent evidence to support his findings, thus on appeal the calculations were reversed. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).

Magistrate did not err in using Idaho R. Civ. P. 60(a) to correct the father's child support obligations where § 32-706 listed relevant factors that a court had to consider when determining the amount of child support either parent owed, and the actual tax benefit recognized by the part claiming the federal child dependency exemption was one such factor. *Silsby v. Kepner*, 140 Idaho 412, 95 P.3d 30 (Ct. App. 2003).

### **Reinstatement.**

Granting of the father's motion to dismiss the mother's request for the reinstatement of child support was improper pursuant to § 32-706(2) because there were no grounds to impose a requirement that a request for support under § 32-706(2) be initiated before the subject child reached 18. *Busse v. Busse*, 141 Idaho 566, 113 P.3d 224 (2005).

### **Statement of Factors Considered.**

Trial judges in divorce cases should state reasons for their decisions on disputed child support and attorney fee issues, unless those

reasons are otherwise obvious from the record; the statement need not be lengthy and it may only consist of brief remarks in open court. But regardless of form, the statement at a minimum should note the existence of the legislative guidelines and should identify those factors which the judge has weighed in arriving at his decision. *Bailey v. Bailey*, 107 Idaho 324, 689 P.2d 216 (Ct. App. 1984).

Magistrate erred in applying a cap rather than an evidence driven standard in determining whether any additional support above the combined guidelines income figure of \$70,000.00 was appropriate in action involving modification of child support; although magistrate increased father's child support under Idaho Child Support Guidelines (guidelines) he inappropriately shifted the burden of proof to mother regarding factors set forth under guidelines instead of analyzing the income of the parties and the requirements of the children. *Jensen v. Jensen*, 128 Idaho 600, 917 P.2d 757 (1996).

### **Support After Majority.**

The court cannot compel the husband to support children after they attain their majority. *Piatt v. Piatt*, 32 Idaho 407, 184 P. 470 (1919).

The trial court erred in believing the provisions of § 7-1121 justified the award of child support until age 21 if the child was pursuing his education, because the trial court's expansion by analogy of the provisions of § 7-1121 conflicts with the pre-1991 version of this section, where the minor child became 18 years of age in June of 1990 and the 1990 amendment to this section that provided for continuing support did not become effective until July of 1990. *Walborn v. Walborn*, 120 Idaho 494, 817 P.2d 160 (1991).

A provision in plaintiff's settlement agreement requiring plaintiff to pay for half of his children's college education was held to be a provision requiring post-majority child support and due to the merger of the settlement agreement into the divorce decree, the agreement, including that of post-majority child support potentially beyond the requirement of subsection B. of this section, was no longer enforceable as a separate contractual obligation and ex-wife could not enforce the agreement through an action on the divorce decree. *Noble v. Fisher*, 126 Idaho 885, 894 P.2d 118 (1995).

**Cited in:** *Compton v. Compton*, 101 Idaho 328, 612 P.2d 1175 (1980); *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982); *Franks v. Franks*, 119 Idaho 997, 812 P.2d 304 (Ct. App. 1991); *Muthersbaugh v. Neumann*, 133 Idaho 677, 991 P.2d 865 (Ct. App. 1999).



## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Children by former marriage.  
Contempt of court.  
Discretion of court.  
Establishment of trust.  
Modification of allowance.  
Salary increase.  
Statement of factors considered.

**Children by Former Marriage.**

Court could make allowance for "children of the marriage," but former statute made no provision for maintenance and support of children of wife by former marriage. *Smiley v. Smiley*, 46 Idaho 588, 269 P. 589 (1928).

**Contempt of Court.**

The issue of defendant's contempt for failure to support child was an issue to be decided in contempt proceedings and plaintiff's contention in the premises was without merit, she merely alleging him to be presently in contempt, such allegation not to be substituted for the procedural requisites of the statute on contempt, especially since alleged contempt was not one committed before the court. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

**Discretion of Court.**

The amount of money awarded to a wife in a divorce action for child support and maintenance rests in the sound discretion of the trial court. *Voss v. Voss*, 91 Idaho 17, 415 P.2d 303 (1966).

Trial court did not abuse its discretion in failing to award wife alimony and child support in divorce decree in favor of husband, where wife did not claim or offer any evidence of any requirement for additional support money, and husband was making support payments since his arrest. *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955).

**Establishment of Trust.**

The court is authorized to make provision for the support and education of the children of the marriage and in so doing, to subject the community property to that purpose and to require security therefor and enforce the same by receiver or by any other remedy applicable to the case. The establishment of a trust of community property was an applicable remedy and a method of subjecting that property to the support and education of the children, and was within the jurisdiction of the court. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

**Modification of Allowance.**

There was no abuse of discretion by trial court in denying petition to modify divorce decree so as to increase support allowed for

minor child where petition failed to allege a material change in condition of the parties. *Fish v. Fish*, 67 Idaho 78, 170 P.2d 802 (1946).

The fact that the child is a minor is not the sole criterion of a court's power or jurisdiction to modify the child maintenance obligations of the original decree; rather, the fact of dependency of the child constitutes the governing criterion to be considered in imposing the obligation, and thereafter in continuing, modifying or terminating such obligation. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

An application for modification of a decree awarding a child support upon the ground of a material permanent change in the circumstances of the parties since the entry of the decree, is addressed to the sound judicial discretion of the trial court. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

The evidence in regard to the age, health and self-sufficiency of the son of the parties and as regards defendant-father's bad physical condition and his reduced earnings was competent and substantial and sufficient to sustain the trial court's order of modification. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

The authority to modify cannot be extended to modification of an agreement of the parties; for only when there has been a merger of the agreement into the decree itself does the court have the authority to make such a modification, and any modification is then of the court's order and not of the agreement. *Turner v. Turner*, 90 Idaho 308, 410 P.2d 648 (1966).

**Salary Increase.**

A salary increase of a divorced husband, to become effective approximately 3½ months after the trial, should have been considered by the court in awarding alimony and child support. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

**Statement of Factors Considered.**

Trial judges in divorce cases should state reasons for their decisions on disputed child support and attorney fee issues, unless those reasons are otherwise obvious from the record; the statement need not be lengthy and it may only consist of brief remarks in open court. But regardless of form, the statement at a minimum should note the existence of the



legislative guidelines and should identify those factors which the judge has weighed in

arriving at his decision. *Bailey v. Bailey*, 107 Idaho 324, 689 P.2d 216 (Ct. App. 1984).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 1001 et seq.

**C.J.S.** — 27C C.J.S., Divorce, § 1077 et seq.

**A.L.R.** — Child custody provisions of divorce or separation decree as subject to modification on habeas corpus. 4 A.L.R.3d 1277.

Power of court which denied divorce, legal separation, or annulment, to award custody or make provisions for support of child. 7 A.L.R.3d 1096.

Spouse's acceptance of payments under alimony or property settlement or child support provisions of divorce judgment as precluding appeal therefrom. 29 A.L.R.3d 1184.

Power of divorce court, after child attained majority, to enforce by contempt proceedings payment of arrears of child support. 32 A.L.R.3d 888.

Income of child from other source as excusing parent's compliance with support provisions of divorce decree. 39 A.L.R.3d 1292.

Right to credit on accrued support payments for time child is in father's custody or for other voluntary expenditures. 47 A.L.R.3d 1031.

Wife's possession of independent means as affecting her right to child support pendente lite. 60 A.L.R.3d 832.

Father's liability for support of child furnished after divorce decree which awarded custody to mother but made no provision for support. 91 A.L.R.3d 530.

Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's college education. 99 A.L.R.3d 322.

Validity and effect, as between former spouses, of agreement releasing parent from payment of child support provided for in an earlier divorce decree. 100 A.L.R.3d 1129.

Laches or acquiescence as defense, so as to bar recovery of arrearages of permanent alimony or child support. 5 A.L.R.4th 1015.

Validity and enforceability of escalation clause in divorce decree relating to alimony and child support. 19 A.L.R.4th 830.

Excessiveness or adequacy of money awarded as child support. 27 A.L.R.4th 864.

Excessiveness or adequacy of amount of money awarded for alimony and child support combined. 27 A.L.R.4th 1038.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Death of obligor parent as affecting decree for support of child. 14 A.L.R.5th 557.

Right to credit on child support payments for social security or other government dependency payments made for benefit of child. 34 A.L.R.5th 447.

Basis for imputing income for purpose of determining child support where obligor spouse is voluntarily unemployed or underemployed. 76 A.L.R.5th 191.

Right to credit on child support arrearages for time parties resided together after separation or divorce. 104 A.L.R.5th 605.

Right to credit against child support arrearages for time child spent in custody of noncustodial parent, other than for visitation or under court order, without custodial parent's approval. 108 A.L.R.5th 359.

Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with noncustodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for contributions to housing costs, utility bills, and other alleged household necessities made for child's benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

Right to credit on child support for health insurance, medical, dental, and orthodontic expenses paid for child's benefit while child is not living with obligor parent. 1 A.L.R.6th 493.

Right to credit on child support for contributions to educational expenses of child while child is not living with obligor parent. 2 A.L.R.6th 439.

Right to credit on child support for contributions to travel expenses of child while child is not living with obligor parent. 3 A.L.R.6th 641.

Right to credit on child support for continued payments to custodial parent for child who has reached majority or otherwise become emancipated. 4 A.L.R.6th 531.

### **32-706A. Purpose — Authorization to adopt guidelines — Guidelines to be presumptive. [Repealed.]**

#### **STATUTORY NOTES**

**Compiler's Notes.** — This section, which comprised I.C., § 32-706A, as added by 1989, ch. 411, § 2, p. 1003; am. 1992, ch. 142, § 2, p. 435; am. 1993, ch. 160, § 1, p. 409; am. 1994,

ch. 236, § 1, p. 745; am. 1995, ch. 258, § 1, p. 841; am. 1997, ch. 34, § 1, p. 61; am. 1999, ch. 149, § 1, p. 420, was repealed by S.L. 2000, ch. 107, § 2, effective July 1, 2000.

**32-707. Security.** — The court may require reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. [R.S., § 2475; reen. R.C. & C.L., § 2665; C.S., § 4645; I.C.A., § 31-707; am. 1980, ch. 378, § 6, p. 961.]

#### **JUDICIAL DECISIONS**

##### **ANALYSIS**

Award.  
Property liable.  
Successors in interest.  
Support and education of children.

##### **Award.**

Separate maintenance may be granted in Idaho, but in the absence of statutory authority only a protected and assured award for the maintenance, care and support of the wife and children can be made and there can be no division or transfer of community and separate property because the marital relationship continues. *Radermacher v. Radermacher*, 59 Idaho 716, 87 P.2d 461 (1938).

Trial court should have required security of husband in making an award to wife for alimony where husband's property was located in Canada and there was no community property. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954).

##### **Property Liable.**

Where a court requires a husband to provide support for a wife it must resort first, to the community property and then to the separate property of the husband, and where the wife does not have sufficient separate estate and there is insufficient community property to provide for her support, the separate property of the husband may be applied thereto.

*Martin v. Soden*, 81 Idaho 274, 340 P.2d 848 (1959). (Decision prior to 1980 amendment of § 32-708).

##### **Successors in Interest.**

Where present owners of a tract of land were not strangers but were successors in estate and privies of the divorced parties, they were bound by the decree awarding the husband's property to the wife in trust for the use and benefit of the children to the same extent and under the same rules as applicable to divorced parties. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

##### **Support and Education of Children.**

The appointment of a trustee and the subjection of the community property to his control under the direction of the court was justified where both parties were found unfit for the custody of the children and financially irresponsible and it was within the power of the court to subject the property to further or additional allowances for the support and education of the children in the future as their needs might require. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

**32-708. What property liable.** — When implementing and construing sections 32-705 through 32-707, Idaho Code, the court must resort, first, to the community property, then to the separate property of either party. [R.S., § 2476; reen. R.C. & C.L., § 2666; C.S., § 4646; I.C.A., § 31-708; am. 1980, ch. 378, § 7, p. 961.]

## JUDICIAL DECISIONS

## ANALYSIS

Attorney fees.  
 Order of liability of property.  
 Satisfaction prior to distribution.  
 Support and education of children.

**Attorney Fees.**

Where wife has sufficient separate estate to enable her to defend the suit and there is no community property, court will not resort to the separate estate of the husband for attorney's fee and suit money. *McDonald v. McDonald*, 55 Idaho 102, 39 P.2d 293 (1934).

There was no abuse of discretion by the trial court where the judge decided that the attorneys' fees of both parties were community debts and were to be satisfied out of the community property before the division, since the awarding and method of payment of attorney fees is a matter which is within the discretion of the trial court. *Brammer v. Brammer*, 93 Idaho 671, 471 P.2d 58 (1970).

The rule that pre-divorce attorney fees must be treated as community debts has been statutorily set aside. *Jensen v. Jensen*, 124 Idaho 162, 857 P.2d 641 (1993).

**Order of Liability of Property.**

If there is no community property the trial court must look to separate property of husband in making an award for alimony. *Jolliffe v. Jolliffe*, 76 Idaho 95, 278 P.2d 200 (1954). (Decision prior to 1980 amendment).

Where a court requires a husband to provide support for a wife it must resort first, to the community property and then to the separate property of the husband, and where the wife does not have sufficient separate estate and there is insufficient community property to provide for her support, the separate property of the husband may be applied thereto. *Martin v. Soden*, 81 Idaho 274, 340 P.2d 848 (1959). (Decision prior to 1980 amendment).

Inasmuch as this section mandated that a court resort first to community property in making allowances for wife's attorney fees

and temporary support, the trial court was in error in setting off the community interest in a separate property residence against the husband's previously decreed temporary support, attorney fee obligations and community debts. *Mifflin v. Mifflin*, 97 Idaho 895, 556 P.2d 854 (1976).

**Satisfaction Prior to Distribution.**

The husband's payment of all community obligations and approximately \$5,000 for the wife's temporary support and attorney's fees should be satisfied first from community property before an order for the equitable division of community property. *Tolman v. Tolman*, 92 Idaho 108, 437 P.2d 624 (1968).

In a divorce proceeding the trial court erred in failing to satisfy the award of attorney fees to the plaintiff wife from the total property owned by the community before dividing that property. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982).

In a divorce action, it was proper for the district court to allow delinquent temporary child support to be used as an offset against the community property before distribution. *Fisher v. Fisher*, 104 Idaho 68, 656 P.2d 129 (1982).

**Support and Education of Children.**

Where necessary in order to provide support and education for the children the court may resort to the separate property of the husband and of the wife for that purpose. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

**Cited in:** *Peterson v. Peterson*, 94 Idaho 187, 484 P.2d 736 (1971); *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987); *Beesley v. Beesley*, 114 Idaho 536, 758 P.2d 695 (1988).

## RESEARCH REFERENCES

**A.L.R.** — Copyright, patent, or other intellectual property as marital property for purposes of alimony, support, or divorce settlement. 80 A.L.R.5th 487.

Spouse's cause of action for negligent personal injury, or proceeds therefrom, as separate or community property. 80 A.L.R.5th 533.

**32-709. Modification of provisions for maintenance and support.**

— (1) The provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of a substantial and material change of circumstances.



(2) The court may allow a credit against child support arrearages for periods of time exceeding one hundred twenty (120) days during which the minor children have lived primarily with the obligated parent with the knowledge and consent of the custodial parent. [I.C., § 32-709, as added by 1980, ch. 378, § 8, p. 961; am. 2003, ch. 246, § 1, p. 637.]

### STATUTORY NOTES

**Prior Laws.** — Former § 32-709, which § 2667; C.S., § 4647; I.C.A., § 31-709, was comprised R.S., § 2477; reen. R.C. & C.L., repealed by S.L. 1980, ch. 378, § 1.

### JUDICIAL DECISIONS

#### ANALYSIS

#### Appeal.

Applicability.

Bad faith worsening of financial position.

Continuance.

Determining modification.

Effect of proposed guidelines.

Future adjustments.

—Automatic.

Incarcerated parent.

Movant in contempt.

No retroactive modification.

Offset of attorney fees.

Substantial change in circumstances.

—Not found.

Substantial and material change.

—Sufficient evidence.

#### Appeal.

Since the propriety of magistrate's order denying wife's motion for summary judgment regarding modification of spousal support was the only issue presented on appeal to the district court, and because the correctness of that order was not a proper subject for review on appeal, the district court did not err in dismissing the appeal. *Keeler v. Keeler*, 124 Idaho 407, 860 P.2d 23 (Ct. App. 1993).

#### Applicability.

Magistrate did not err in applying the correction retroactively as this section did not apply to corrections made pursuant to Idaho R. Civ. P. 60(a). *Silsby v. Kepner*, 140 Idaho 412, 95 P.3d 30 (Ct. App. 2003).

#### Bad Faith Worsening of Financial Position.

If a party in bad faith voluntarily worsens his financial position he cannot obtain a modification of a decree under which he is required to pay child support. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Magistrate properly held that a father was voluntarily underemployed when he sought a reduction in his child support obligation based on a substantial change in circumstances because the father's decision to leave

a well-paying job in California where he had earned significant seniority coincided with the scheduled increase in his child support obligation. *Aguiar v. Aguiar*, — Idaho —, 127 P.3d 234 (Ct. App. 2005).

#### Continuance.

Where wife was granted maintenance for a period of three years in order to allow her time to obtain full employment and establish herself financially, she could under this section seek an extension of the three-year period but would be required to show that a substantial and material change in circumstances had occurred in order to justify such a continuance. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

District court sitting in its appellate capacity could not impose a limitation on extensions of award of maintenance as any such extension must be determined by the magistrate following a hearing pursuant to this section. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

#### Determining Modification.

Determining whether the child support provisions of a divorce decree should be modified essentially is a two-step process; first, the trial court must determine whether a sub-

stantial, material change of circumstances has occurred warranting a modification; second, the trial court must determine the amount of the modification, considering all relevant factors, especially those enumerated in § 32-706. *Howard v. Mecham*, 117 Idaho 542, 789 P.2d 538 (Ct. App. 1990).

A person seeking modification of a divorce decree provision for child support must show a substantial and material change of circumstances occurring after the last order affecting the support obligation. When presented with such a request, the trial court must first determine whether a substantial, material change of circumstances has occurred warranting a modification. If a modification is found to be justified, the trial court must then determine the amount of the modification, considering all relevant factors, especially those enumerated in § 32-706. *Rohr v. Rohr*, 126 Idaho 1, 878 P.2d 175 (Ct. App. 1994).

Where there was substantial, competent evidence in the record to support the magistrate's finding that a father's reduced gross income combined with the birth of another child by his current wife and that child's need for support constituted a permanent, material, and substantial change of circumstances since the last order modifying the divorce decree, there was no error in the magistrate's granting the father's petition for modification, despite the fact that the parties' divorce decree was contemporaneously the subject of an appeal before the Idaho Court of Appeals. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).

Where a parent filed his petition for modification of his divorce decree, having incurred and paid ongoing expenses for his newborn child, having determined that a substantial and material change of circumstances had occurred since the divorce decree sufficient to warrant modification of the decree, the magistrate should have retroactively applied the child support modification, as of the date on which the petition to modify was filed. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996).

#### **Effect of Proposed Guidelines.**

Magistrate may not modify child support where there was no basis for the modification other than that it appeared to conform with certain proposed guidelines that were not in effect at the time of the proposed modification and which, in fact, were not eventually adopted. *Howard v. Mecham*, 117 Idaho 542, 789 P.2d 538 (Ct. App. 1990).

#### **Future Adjustments.**

If a judge finds that the needs of a child or of a former spouse are likely to change in the future, and that resources to meet the changing needs are likely to be available, the judge may prescribe support schedules containing future adjustments. *Brazier v. Brazier*, 111

Idaho 692, 726 P.2d 1143 (Ct. App. 1986), overruled on other grounds, *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

#### **—Automatic.**

Where provision of divorce decree permitting reduction in support payments due to onset of disability was self executing, reduction of spousal support due to payor's spouse's disability did not require judicial approval prior to abatement of payments. Although such an automatic future adjustment clause does not inhibit the court's continuing jurisdiction to modify an award when presented with "a substantial and material change of circumstances," no such change in circumstances had been asserted and denial of judgment was affirmed. *Toyama v. Toyama*, 129 Idaho 142, 922 P.2d 1068 (1996).

The purpose of this section is to minimize the number of occasions when divorce decrees must be disturbed. The purpose is well served by providing for automatic future adjustments in payments, even when the factor upon which the automatic adjustment hinges is somewhat uncertain. *Keller v. Keller*, 130 Idaho 661, 946 P.2d 623 (1997).

#### **Incarcerated Parent.**

Where the obligor parent was sentenced to an indeterminate term of eight years in prison, and at the time his motion to modify the decree for child support was filed, he still had more than six years to serve, but since he could be paroled earlier, his motion to modify support decree should not be denied merely because he probably would not be incarcerated for the remainder of his life, therefore, the action was remanded for further consideration by the magistrate. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Should the magistrate reduce an obligor parent's child support burden during incarceration, he may consider an automatic reinstatement of the former support requirement following release. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

#### **Movant in Contempt.**

A trial court is without authority to modify a child support order if the movant is in contempt, unless the movant shows that, for reasons beyond his control, purging himself of the contempt is impossible. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

#### **No Retroactive Modification.**

Since this section prohibits modification of support accruing before date of modification motion court's refusal to retroactively release the obligor parent from support accruing before the date of his modification motion was correct. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).



### Offset of Attorney Fees.

Where the trial court did not discuss the welfare of the children before offsetting father's attorney fees against the child support payments and where the record showed mother had two children in need of support and could not provide for them on her own, it was not proper for the trial court to reduce father's child support payments in order to satisfy an award of attorney fees. *Ireland v. Ireland*, 123 Idaho 955, 855 P.2d 40 (1993).

### Substantial Change in Circumstances.

Incarceration and the associated possibility of reduction in income for an extended, but nonetheless limited period is not insufficient in permanence for a court to modify the amount of support required. Instead, the period for which a change in circumstances is anticipated to exist, and its permanence, should be two of the factors to be considered by the trial court in determining whether a change in circumstances is "substantial." *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

A mutual mistake of fact as to the legal status of a child for whom husband in divorce action had power of attorney but to whom he was neither the natural nor adoptive father, and his mistaken belief that he had a duty to pay support for said child, were not substantial and material changes of circumstances. *Gordon v. Gordon*, 118 Idaho 804, 800 P.2d 1018 (1990).

The magistrate court's decision to modify a divorce decree to order wife to pay child support to ex-husband was affirmed because "a showing of a substantial and material change of circumstances" existed where wife, who at the time of the final decree earned no income, was now earning \$25,000 per year, was receiving a portion of ex-husband's military retirement benefits and was remarried to a new husband earning approximately \$47,000 per year. *Walborn v. Walborn*, 120 Idaho 494, 817 P.2d 160 (1991).

Where magistrate found that a substantial and material change of circumstances had occurred since the original decree was entered which justified increasing plaintiff's child support obligation under this section as plaintiff had realized a significant increase in his income due to a salary increase in his primary job and the additional salary from a part-time job, there were increased costs of childrearing, and adoption of the Idaho Child Support Guidelines at I.R.C.P. 6(c)(6) had occurred since the time of the parties' divorce, the district court did not abuse its discretion in affirming the decision of the magistrate court that plaintiff's income from his second job should be considered in determining his child support obligation. *Noble v. Fisher*, 126 Idaho 885, 894 P.2d 118 (1995).

### —Not Found.

There was not a substantial and material change in circumstances shown at the time wife filed her motion to modify child support where the only issue raised was the increased cost of raising teenaged children and where the trial court found that wife's difficult financial situation was caused by her own mismanagement and underemployment. *Ireland v. Ireland*, 123 Idaho 955, 855 P.2d 40 (1993).

### Substantial and Material Change.

### —Sufficient Evidence.

Where doctor was showing physical and emotional signs of an impending burnout, a substantial and material change had occurred in that plaintiff was no longer physically or emotionally able to continue with his current work schedule of 80-100 hours per week. *Keller v. Keller*, 130 Idaho 661, 946 P.2d 623 (1997).

**Cited in:** *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984); *Levin v. Levin*, 122 Idaho 583, 836 P.2d 529 (1992); *Rake v. Rake*, — Idaho —, 123 P.3d 716 (Ct. App. 2005).

## DECISIONS UNDER PRIOR LAW

### ANALYSIS

Change of circumstances.  
Consent decree.  
Contempt of court.  
Duty to seek modification.  
Property settlement agreements.

### Change of Circumstances.

Only substantially changed circumstances and conditions of the parties will warrant a modification of the divorce decree. *Daniels v. Daniels*, 82 Idaho 201, 351 P.2d 236 (1960).

An application for modification of a decree

awarding child support, upon the ground of a material permanent change in the circumstances of the parties since the entry of the decree, is addressed to the sound judicial discretion of the trial court. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).



### Consent Decree.

Consent decrees must conform to the agreement of the parties subject to such inherent powers of the court on matters concerning the welfare of the child and subject to its continued jurisdiction to modify support payments under changed conditions. *Fisher v. Fisher*, 84 Idaho 303, 371 P.2d 847 (1962).

### Contempt of Court.

In contempt proceedings husband's motion to modify the alimony decree cannot be considered until he has purged himself of contempt, and to avoid punishment for contempt husband has burden of proving his inability to pay. *Lusty v. Lusty*, 70 Idaho 382, 219 P.2d 280 (1950).

### Duty to Seek Modification.

The court is open at any time to husband after rendition of original decree to seek modification, and where he feels decree is excessive, it is incumbent upon him to apply for modification, not to default and take the chance of showing inability to pay. *Lusty v. Lusty*, 70 Idaho 382, 219 P.2d 280 (1950).

### Property Settlement Agreements.

The fact that the property settlement agreement is merged into divorce decree is not alone sufficient to authorize modification of the decree by the court, for only where payments provided for by the agreement are separable from the provisions relative to the division of property or where the payments for support and maintenance are not so integrated that they constitute reciprocal consideration for the division of property can the court modify such agreement. *Kimball v. Kimball*, 83 Idaho 12, 356 P.2d 919 (1960).

Where there is no merger of a property settlement agreement into the divorce decree, the agreement itself governs, and the terms of

the agreement being otherwise valid, they are not subject to being rewritten or modified by the court without the consent of both parties. *Kimball v. Kimball*, 83 Idaho 12, 356 P.2d 919 (1960).

Power of trial court to modify provisions of decrees providing for support and maintenance of wife cannot be extended to modification of an agreement of the parties, for only when there has been a merger of the agreement into the decree itself does the court have authority to make such a modification, and any modification is then of the court's order and not of the agreement. *Kimball v. Kimball*, 83 Idaho 12, 356 P.2d 919 (1960).

Where parties in property settlement agreement provided that in consideration of property transfer husband promised to pay wife \$2500 immediately and \$150 a month thereafter, they clearly intended that the provision for monthly payments be an inseparable, indivisible and integral part of such agreement, and the trial court had no power to modify monthly payment provision without parties' expressed consent even though the agreement had been incorporated into divorce decree. *Kimball v. Kimball*, 83 Idaho 12, 356 P.2d 919 (1960).

The general rule that a court has no authority to modify a property settlement agreement that has been merely ratified or approved by the court but not merged into the court's decree would not apply where the court, in addition to stating in its decree that the property settlement agreement "is hereby ratified, confirmed and approved, but is not merged herein," also specifically ordered the defendant to make alimony payments; accordingly, the trial court had continuing jurisdiction to modify the alimony award under former section governing modification of alimony awards. *Sullivan v. Sullivan*, 102 Idaho 737, 639 P.2d 435 (1981).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 1079 et seq.

**C.J.S.** — 27B C.J.S., Divorce, § 638 et seq., 1136 et seq.

**A.L.R.** — Income of child from other source as excusing parent's compliance with support provisions of divorce decree. 39 A.L.R.3d 1292.

Power of court to modify decree for alimony or support to spouse which was based on agreement of parties. 61 A.L.R.3d 520.

Divorced woman's subsequent sexual relations or misconduct as warranting, alone or with other circumstances, modification of alimony decree. 98 A.L.R.3d 453.

Right to credit on child support for health

insurance, medical, dental, and orthodontic expenses paid for child's benefit while child is not living with obligor parent. 1 A.L.R.6th 493.

Right to credit on child support for contributions to educational expenses of child while child is not living with obligor parent. 2 A.L.R.6th 439.

Right to credit on child support for contributions to travel expenses of child while child is not living with obligor parent. 3 A.L.R.6th 641.

Right to credit on child support for continued payments to custodial parent for child who has reached majority or otherwise become emancipated. 4 A.L.R.6th 531.

**32-710. Allowance for support of children. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which § 2668; C.S., § 4648; I.C.A., § 31-710 was comprised R.S., § 2478; reen. R.C. & C.L., repealed by S.L. 1980, ch. 378, § 1.

**32-710A. Support payments paid to the department of health and welfare.** — A. Effective October 1, 1998, all payments for child support ordered pursuant to any decree of divorce or other order for support shall be paid, unless otherwise ordered by the court, to the department of health and welfare. The department shall keep a record of payments made under said order or decree and shall, within two (2) business days of receipt of such payment, transmit said payments to the person or persons entitled thereto by virtue of said order or decree. Whenever a child is in the physical care of a person or entity other than its parents and the department of health and welfare is providing child support services under title IV-D of the social security act, the department may, after written notice to the obligor and obligee and the opportunity for hearing set forth in paragraphs 1. through 3. of this subsection transmit payments under an order of support for said child to the person or entity who has physical care of said child, without further order of the court, whether or not such person or entity is the obligee under the support order.

1. The department shall send notice of its intent to transmit child support payments to the person or entity who has physical care of the child by registered or certified mail to the last known address of the obligor and obligee under an order for support of the child.

2. The obligor and obligee may file a written objection to the transmittal of child support payments with a court of proper jurisdiction within fourteen (14) days from the date the notice of transmittal is mailed. A copy of the written objection shall be sent to the department of health and welfare.

3. After hearing in a court of proper jurisdiction and entry of an order, or if no written objection is made by the obligor or obligee, the department may transmit the payments under an order of support for the child to the person or entity who has physical care of the child.

B. Any person entitled to receive child support payments pursuant to any decree of divorce or other order for support may make application for enforcement services to the department of health and welfare as provided in section 56-203A, Idaho Code, when child support is not being paid as ordered.

C. All child support orders shall provide that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree. [I.C., § 32-710A, as added by S.L. 1967, ch. 94, § 1, p. 202; am. 1969, ch. 237, § 1, p. 750; am. 1986, ch. 222, § 5, p. 593; am. 1990, ch. 90, § 1, p. 188; am. 1995, ch. 320, § 1, p. 1083; am. 1998, ch. 292, § 6, p. 928.]

## STATUTORY NOTES

**Federal References.** — Title IV-D of the Social Security Act, referred to in subsection A. of this section, is compiled as 42 U.S.C. §§ 651 — 667.

## JUDICIAL DECISIONS

## ANALYSIS

Order under uniform act.  
Venue for proceedings.

**Order Under Uniform Act.**

A support order made in an Idaho Court in an Uniform Reciprocal Enforcement of Support Act case does not nullify an existing support order which has been entered in this state. *Nomer v. Kossman*, 100 Idaho 898, 606 P.2d 1002 (1980).

found in Idaho, an appropriate proceeding should be brought in the court which entered the original decree. *Nomer v. Kossman*, 100 Idaho 898, 606 P.2d 1002 (1980).

**Cited in:** *Ziegler v. Ziegler*, 107 Idaho 527, 691 P.2d 773 (Ct. App. 1984); *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150 (1985).

**Venue for Proceedings.**

Other than in unusual circumstances, where the party required to pay support is

## RESEARCH REFERENCES

**A.L.R.** — Spouse's acceptance of payments under alimony or property settlement or child support provisions of divorce judgment as precluding appeal therefrom. 29 A.L.R.3d 1184.

Power of divorce court, after child attained majority, to enforce by contempt proceedings payment of arrears of child support. 32 A.L.R.3d 888.

**32-711. Legitimacy of issue. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.** — This section which comprised 1875, p. 639, § 6; R.S., § 2479; reen. R.C. & C.L., § 2669; C.S., § 4649; I.C.A., § 31-711 was repealed by S.L. 1980, ch. 378, § 1.

**32-712. Community property and homestead — Disposition.** — In case of divorce by the decree of a court of competent jurisdiction, the community property and the homestead must be assigned as follows:

1. The community property must be assigned by the court in such proportions as the court, from all the facts of the case and the condition of the parties, deems just, with due consideration of the following factors:

(a) Unless there are compelling reasons otherwise, there shall be a substantially equal division in value, considering debts, between the spouses.

(b) Factors which may bear upon whether a division shall be equal, or the manner of division, include, but are not limited to:

(1) Duration of the marriage;

(2) Any antenuptial agreement of the parties; provided, however, that the court shall have no authority to amend or rescind any such agreement;

(3) The age, health, occupation, amount and source of income, vocational skills, employability, and liabilities of each spouse;



- (4) The needs of each spouse;
- (5) Whether the apportionment is in lieu of or in addition to maintenance;
- (6) The present and potential earning capability of each party; and
- (7) Retirement benefits, including, but not limited to, social security, civil service, military and railroad retirement benefits.

2. If a homestead has been selected from the community property, it may be assigned to either party, either absolutely, provided such assignment is considered in distribution of the community property, or for a limited period, subject in the latter case to the future disposition of the court; or it may be divided or be sold and the proceeds divided.

3. If a homestead has been selected from the separate property of either, it must be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the other spouse. [1875, p. 635, § 12; R.S., § 2480; reen. R.C. & C.L., § 2670; C.S., § 4650; I.C.A., § 31-712; am. 1965, ch. 63, § 1, p. 98; am. 1980, ch. 378, § 9, p. 961.]

### STATUTORY NOTES

**Cross References.** — Community property generally, § 32-901 et seq. ch. 63 declared an emergency. Approved Feb. 27, 1965.

**Effective Dates.** — Section 2 of S.L. 1965,

### JUDICIAL DECISIONS

#### ANALYSIS

Alimony distinguished.  
 Cash award in lieu of division.  
 Community debts.  
 Discretion of court.  
 Division. \*  
 —After remand.  
 —Manner.  
 —Equality.  
 —Proper.  
 —Subsequent to divorce decree.  
 —Mistake in tax liability.  
 Effect of decree.  
 Equal interest of spouses.  
 Findings of court.  
 Foreign divorce.  
 Goodwill of a business.  
 Improvements to separate property.  
 In general.  
 Jurisdiction of court.  
 Method of payment.  
 Postnuptial agreement.  
 Prenuptial debts.  
 Repossessed property.  
 Retirement benefits.  
 Review of disposition.  
 Sale of community property.  
 Sale of separate property.  
 Separate property.  
 —Enhancement.  
 Stock.  
 Trust property on indian reservation.

**Alimony Distinguished.**

In this state, award of alimony is not considered as an award of community property, the two being separate and distinct. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

**Cash Award in Lieu of Division.**

A divorce decree for the wife on the ground of extreme cruelty could not be complained of on her appeal because the decree awarded to her \$1,000 in cash instead of an interest in allegedly community realty, where realty was subject to indebtedness far in excess of its value. *Malone v. Malone*, 64 Idaho 252, 130 P.2d 674 (1942).

A qualified domestic relations order is a present separation of future retirement benefits and, under certain circumstances, may be preferable over a cash distribution because it does not place an undue financial strain on either party; but where husband was prepared to make a lump sum payment to wife the magistrate should have included a provision in the qualified domestic relations order that would have given him the option to make a lump sum payment to her within 60 days after judgment was entered representing the present value of her interest in the fixed benefit plan benefits. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

**Community Debts.**

The assignment of the community debts to the husband was not an abuse of discretion, where the findings of fact contained ample justification for the disparate division of property, including the duration of marriage, employability of each spouse, and the present and potential earning capability of each party. *Shurtliff v. Shurtliff*, 112 Idaho 1031, 739 P.2d 330 (1987).

**Discretion of Court.**

Disposition of community property is, in the first instance, in the discretion of trial court and unless such discretion is abused, judgment will not be disturbed. *Donaldson v. Donaldson*, 31 Idaho 180, 170 P. 94 (1917).

Disposition of community property, where divorce is granted on ground of extreme cruelty, is primarily committed to discretion of trial court. *Carter v. Carter*, 39 Idaho 798, 230 P. 768 (1924); *Smiley v. Smiley*, 46 Idaho 588, 269 P. 589 (1928) (decisions prior to 1965 amendment).

An appellate court can modify decree of distribution where divorce is granted on grounds of extreme cruelty or adultery, since in such cases its discretion is superior to discretion of trial court. *O'Brien v. O'Brien*, 73 Idaho 64, 245 P.2d 785 (1952) (decision prior to 1965 amendment).

When a marriage is dissolved by decree on the grounds of adultery or extreme cruelty, the trial court has jurisdiction to assign the

community property to the respective parties in such proportions as the trial court or the condition of the parties deems just. The decree in such cases is subject to revision on appeal in all particulars including those which are stated to be in the discretion of the court. *Linton v. Linton*, 78 Idaho 355, 303 P.2d 905 (1956) (decision prior to 1965 amendment).

Where a divorce is granted on grounds of extreme cruelty, the disposition of the community property is committed to the discretion of the trial judge in the first instance, subject, however, to the paramount and superior discretion of the appellate court, and more than one-half may be awarded non-offending spouse. *Farmer v. Farmer*, 81 Idaho 251, 340 P.2d 441 (1959) (decision prior to 1965 amendment).

Where a divorce is granted on the ground of extreme cruelty, the division and disposition of the community property is committed to the discretion of the trial judge primarily, and in the first instance, subject to the paramount and superior discretion of the appellate court. *Jordan v. Jordan*, 75 Idaho 512, 275 P.2d 669 (1954); *Davis v. Davis*, 82 Idaho 351, 353 P.2d 1079 (1960) (decision prior to 1965 amendment).

Where a divorce is granted on the ground of extreme cruelty, the court may divide the community property between the parties in such amounts as in its discretion it may determine to be fair and equitable having regard to the circumstances of the parties. *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020 (1961) (decision prior to 1965 amendment).

The division of community property between parties to a divorce action by the court is subject to the paramount and superior discretion of the Supreme Court on appeal who may in the exercise of such discretion award a larger portion of the community property to the unoffending spouse. *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020 (1961) (decision prior to 1965 amendment).

Where divorce is granted the wife on the ground of extreme cruelty, the disposition of community property is committed to the discretion of the trial court in the first instance. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964) (decision prior to 1965 amendment).

A wife awarded a divorce on the ground of extreme cruelty was not entitled to more than half of the community property as a matter of right, but the trial court had discretionary power to assign the community property in such proportions as it deemed just. *Hammond v. Hammond*, 92 Idaho 623, 448 P.2d 237 (1968).

The division of community property on divorce is within the sound discretion of the trial court and will not be disturbed on appeal in the absence of a clear showing of abuse. A



substantially equal division of community property is sufficient; an exact mathematical division is neither required nor likely. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

The method employed by the trial court in determining the total value of a tract and dividing that amount equally between the parties was within the discretion vested in it by this section. *Hooker v. Hooker*, 95 Idaho 518, 511 P.2d 800 (1973).

Division of community property is a matter within the sound discretion of the trial court, and in absence of clear showing of abuse of such discretion, the award will not be disturbed. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

Where a divorce is decreed upon the ground of extreme cruelty, the community property must be assigned the proportions that the trial judge deems just. A trial court thus has wide discretion in dividing the community property, and its determination will not be disturbed absent a clear showing of abuse of discretion. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982).

The threshold choice between substantial equality and some other equitable division of the property is committed to the trial judge's sound discretion, guided by statutory and case law; if the judge elects an unequal division, the appellate court's inquiry is whether, in the circumstances of the case, the judge has abused his discretion by doing so. *Bailey v. Bailey*, 107 Idaho 324, 689 P.2d 216 (Ct. App. 1984).

Where a magistrate has set out to achieve equality, his decree will not be disturbed on appeal if it appears — upon substantial and competent, albeit conflicting, evidence — that the parties have received substantially equal shares. *Donndelinger v. Donndelinger*, 107 Idaho 431, 690 P.2d 366 (Ct. App. 1984).

Under this section the trial court has the discretion to make a just division of the community property; the division must be substantially equal in value, unless there are compelling reasons otherwise, and maintenance may be considered. *Ross v. Ross*, 117 Idaho 548, 789 P.2d 1139 (1990).

### **Division.**

#### **—After Remand.**

Upon cause being remanded to lower court for additional findings, it may make new order for division of community property as directed by this section. *Callahan v. Callahan*, 33 Idaho 241, 192 P. 660 (1920).

#### **—Manner.**

Where husband and wife own community property, and wife owns separate property, trial court erred in setting off wife's separate property against community property

awarded husband, as all community property must be equally divided between the parties. *Jordan v. Jordan*, 69 Idaho 513, 210 P.2d 934 (1949).

A divorce granted to husband for mental cruelty did not deprive the wife of her interest in the community property, since court was required to consider the facts of the case and the conditions of the parties before making a division. *Prophet v. Peterson*, 77 Idaho 257, 291 P.2d 290 (1955) (Decision prior to 1965 amendment).

In making a disposition of community property after divorce, it is proper for the trial court to recognize certain equities in the wife's favor relating to her separate real property. *Davis v. Davis*, 82 Idaho 351, 353 P.2d 1079 (1960).

Where the divorce is decreed upon the grounds of extreme cruelty, the property must be assigned to the respective parties in such proportions as the court from the facts of the case and conditions of the parties deems just. *Milbourn v. Milbourn*, 86 Idaho 213, 384 P.2d 476 (1963) (Decision prior to 1965 amendment).

The court will, ordinarily, dispose of community property so as to give each spouse sole and immediate control of his or her determined share. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

While ordinarily the court should so dispose of the community as to give each spouse sole and immediate control of her or his determined share, where such a settlement would work a hardship, it would otherwise dispose of the community property, and the court's decree may provide that respondent pay appellant her community share in monthly payments. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

In dividing community property between spouses, where husband's separate business had large retained earnings, court must look to the extent the community would have been benefited if husband's share of earnings had been distributed to him. *Speer v. Quinlan*, 96 Idaho 119, 525 P.2d 314 (1974).

Where stock was a part of the community property, it was improper to use the book value to value the stock where it was not shown that market and book value approximated one another. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

Debts which were not evidenced by written instrument but were accounts on the books of the corporation to which they were owed and which had no due dates or interest charge were properly classified as community property and assigned to respondent in the division of the property where it was shown that such debts would be satisfied without expense to the respondent and there was no evidence that such accounts were not debts. *Simplot v.*



Simplot, 96 Idaho 239, 526 P.2d 844 (1974).

In divorce action in which trial court awarded all of a certain stock to the husband and the record did not reveal the basis on which the shares were awarded, such action must be remanded for clarification of the rationale followed in awarding the stock in order to aid the parties in understanding what the trial court intended. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

In a division of community property such as stock in a corporation, where the shares are not divided between the parties, but are valued by the trial court and then properties of relatively equal value are distributed to each of the parties, it is essential that the trial court make an accurate determination of the market value of the properties prior to making an award which determination must be based upon competent and substantial evidence. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

Although the voidance of I.C. § 32-909 will render both spouses' post-separation earnings community property, this section provides for the just assignment of community property upon the dissolution of the marriage, regardless of the ground for divorce; the inclusion of all post-separation earnings of both spouses as community property, therefore, neither prohibits nor requires that they be assigned to the spouse who earned them. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

Where the record contained neither a statement of compelling reasons for dividing the community estate unequally nor a set of findings to indicate substantial equality, the court had to vacate the provisions of the divorce decree which distributed the community property and allocated the community debts. *Bailey v. Bailey*, 107 Idaho 324, 689 P.2d 216 (Ct. App. 1984).

In dividing the community estate, a trial court must determine the extent and value of the community property, then deduct the community debts outstanding at the time of trial, as well as any attorney fees or support payments required to be made with community funds, and then distribute the balance to the spouses. *Donndelinger v. Donndelinger*, 107 Idaho 431, 690 P.2d 366 (Ct. App. 1984).

The method by which the property is distributed is left to the discretion of the trial court, but ordinarily the trial court should divide the community property in such a way as to give each spouse the sole and immediate control of his or her share of the property; thus, to give each spouse the immediate control of his or her share of the property, the trial court may provide for the sale of community property so long as the sale order does not amount to waste of a community asset or provide that the property be sold for less than it is worth. *Carr v. Carr*, 108 Idaho 684, 701

P.2d 304 (Ct. App. 1985).

The choice between substantial equality and some other equitable division is committed to the trial judge's sound discretion, guided by statutory and case law. *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986), overruled on other grounds, *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

#### —Equality.

Where retention of earnings in a separate property entity has greatly increased one spouse's separate estate, leaving a modest community estate to be divided with the other spouse, the court may deviate from equality in order to alleviate hardship. *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986), overruled on other grounds, *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

Nothing in subdivision (1) of this section or § 32-713A (now repealed) requires that each community asset must be divided equally; paragraph (a) of subdivision (1) of this section only requires that the division be substantially equal in value, and any community asset may change in value after the division of the community. *Ross v. Ross*, 117 Idaho 548, 789 P.2d 1139 (1990).

Magistrate abused his discretion by failing to follow the mandate of subsection (1) of this section, namely, by refusing to consider whether decree provided for a substantially equal division in value of the community property, taking into account the military retirement benefit. *Brooks v. Brooks*, 119 Idaho 275, 805 P.2d 481 (Ct. App. 1990).

Where tax liability of couple was estimated at \$30,000 but was actually \$11,000, such estimate was an excusable mistake of fact which could support the grant of relief under I.R.C.P., Rule 60(b). The next step in the exercise of the magistrate's discretion should have been to determine whether to grant the motion, since Rule 60(b) does not require, but rather allows, relief in the mistake situation. Here the court in granting relief must be governed in the exercise of its discretion by the statutes which regulate Idaho divorce actions, and specifically subsection (1)(a) of this section, which mandates a substantially equal division in value, considering debts, between the spouses, unless there are compelling reasons otherwise. *Thomas v. Thomas*, 119 Idaho 709, 809 P.2d 1188 (Ct. App. 1991).

Where, in his findings and conclusions the magistrate expressly held that "the community property of the parties should be allocated and divided as near to equal as possible," this conclusion made clear that the magistrate set out to achieve a substantially equal division of the parties' community assets under this section. *Jones v. State*, 125 Idaho 294, 870 P.2d 1 (Ct. App.), cert. denied,

513 U.S. 838, 115 S. Ct. 121, 130 L. Ed. 2d 66 (1994).

Allocation of value of dissipated assets during a period of separation to the wife was proper in a divorce action pursuant to § 32-712, although the marital estate no longer had those assets, where there was sufficient evidence to show her intent to dissipate the assets during that time; an unequal division of the proceeds of the parties' ranch after partition was deemed an abuse of discretion, where such unequal apportionment had been based on the fact that the husband had requested the partition, because the resultant loss of value due to the partition was not a compelling reason to punish the husband by unequal distribution. *Larson v. Larson*, 139 Idaho 972, 88 P.3d 1212 (Ct. App. 2003).

#### —Proper.

Supreme Court would not disturb trial judge's division of community property upon appeal of divorce granted on ground of extreme cruelty, the division appearing fair and equitable. *Jordan v. Jordan*, 75 Idaho 512, 275 P.2d 669 (1954).

Property settlement amounting to more than one half the community property upheld on appeal where evidence adduced was sufficient to sustain trial court. *Riggers v. Riggers*, 81 Idaho 570, 347 P.2d 762 (1959).

The trial court did not abuse its discretion in apportioning the property (other than an equity in a dwelling) in favor of appellant wife by some \$450 even where the divorce was granted the respondent husband on the ground of extreme cruelty. *Nichols v. Nichols*, 84 Idaho 379, 372 P.2d 758 (1962) (decision prior to 1965 amendment).

The trial court did not abuse its discretion in the division of the community property where, in a divorce decreed upon the ground of extreme cruelty, the court awarded respondent the farming equipment and household furniture and fixtures, also decreeing respondent to pay appellant an amount equal to one half in value thereof. *Fisher v. Fisher*, 86 Idaho 131, 383 P.2d 840 (1963) (decision prior to 1965 amendment).

Pursuant to this section, the disposition of the property of parties to a divorce action is committed to the discretion of the trial court in the first instance, and in light of the division of the property made by the trial court, the requirement that appellant wife pay her own attorney fees was just and proper. *Milbourn v. Milbourn*, 86 Idaho 213, 384 P.2d 476 (1963).

Trial court did not abuse its discretion in failing to apportion substantially more than one half of the value of the community to the wife in granting her a divorce upon the ground of extreme cruelty, where the record disclosed that neither party was without

fault, as it must be presumed that the court considered the earning capacity of both parties, and found that the wife had intelligence and education to enable her to find and hold employment. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964) (decision prior to 1965 amendment).

Inasmuch as trial court granted respondent husband the divorce on the ground of extreme cruelty, in adjudging disposition of the community property, it was not error to award appellant approximately only 25 percent thereof, subject to revision on appeal to the paramount and superior discretion of the appellate court. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964) (decision prior to 1965 amendment).

An award of \$53,000 community property to the wife and \$24,000 to the husband (consisting of a business operated by him) upon a decree of divorce for extreme cruelty was held not to be an abuse of discretion upon appeal by the wife. *Loveland v. Loveland*, 91 Idaho 400, 422 P.2d 67 (1967).

Evidence that the husband, although totally disabled, had an income of \$264 per month was sufficient to support the trial court's award of \$35.00 a month for each minor child and decree vesting in him the community property but directing him to pay half its appraised value to the wife in instalments of \$35.00 per month. *Meredith v. Meredith*, 91 Idaho 898, 434 P.2d 116 (1967).

The record showed no abuse of discretion in awarding two homes owned by the parties to the husband and one to the wife and ordering the husband to pay the non-real estate community indebtedness of \$15,000 where neither party offered any evidence as to the present value of any of the real estate. *Barker v. Barker*, 92 Idaho 204, 440 P.2d 137 (1968).

There was no abuse of discretion in the equal division of community property where witnesses testified to a lower value as that which they would offer for the property if buying and to a higher value which they would ask if selling, and the court accepted the higher valuation. *Johnson v. Johnson*, 92 Idaho 365, 442 P.2d 775 (1968).

There was no abuse of discretion by the trial court where the judge decided that the attorneys' fees of both parties were community debts and were to be satisfied out of the community property before the division, since the awarding and method of payment of attorney fees is a matter which is within the discretion of the trial court. *Brammer v. Brammer*, 93 Idaho 671, 471 P.2d 58 (1970).

Where trial court's exercise of discretion in ordering payments of \$225 per month by husband to purchase wife's half-interest in the ranch and cattle had not been shown to violate a statute or cause a "serious inequity," it would not be disturbed on appeal. *Ripatti v.*



Ripatti, 94 Idaho 581, 494 P.2d 1025 (1972).

Where interest earned on certificate of deposit was directly related to wife's sole and separate property, little or no community efforts were expended in acquiring the interest, the duration of the marriage was short, wife had to rely upon this investment to provide her with funds with which to pay for all of her living expenses, while husband had his military retirement income as well as income from the sale of his residence, wife had no retirement income or pension plan to aid her in her later years while husband had no needs or worries in that respect, and wife had no marketable skills to enable her to become employed while husband was capable of being employed, the magistrate's findings of fact and conclusions of law paralleled the factors listed and provided appropriate grounds for unequal distribution of the community property. *Lang v. Lang*, 109 Idaho 802, 711 P.2d 1322 (Ct. App. 1985).

A disparate division in community property which served not only to meet the disabled spouse's immediate expenses but provided some discretionary resources enhancing his quality of life and giving him a cushion against risk of future changes in living expenses, was not an abuse of discretion by the magistrate. *Hentges v. Hentges*, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Husband asserted that the parties never established the requisite "marital community" to which benefits and detriments would accrue, demonstrated by the brevity of the marriage and the fact that it was troubled from its onset, but it is within the discretion of the trial court to determine whether there were any compelling reasons that would justify a division of the community property that is not substantially equal and the magistrate's findings and conclusion reveal that the magistrate 1) understood that the division of the community was within the magistrate's discretion, 2) acted within the outer boundaries of the discretion and consistent with the legal standards provided in subsection (1) of this section, and 3) reached the decision by an exercise of reason; therefore, there was no abuse of discretion in dividing the community. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

Where record contained evidence of husband's employment and earnings as well as those of wife and where the factual determination that husband was in a better position to shoulder the community debt was adequately supported by substantial and competent evidence, the magistrate's unequal division of the community property was not an abuse of discretion. *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

#### —Subsequent to Divorce Decree.

Division of property may be made in a later suit. *Kuhnen v. Kuhnen*, 29 Idaho 712, 161 P. 1041 (1916).

If allegation in complaint for divorce states that a complete disposition has been made of the property of the parties, and the court therefore in its decree fails to mention the property, the court upon being advised in a subsequent proceeding that fair division has not been made between the parties, will make a division based on the rights of the parties as of the time of the divorce. *Prophet v. Peterson*, 77 Idaho 257, 291 P.2d 290 (1955).

Where I.R.C.P., Rule 60(b) motion was made after final decree of divorce was entered, magistrate to guide his discretion should have acted consistently with the statutes governing divorce action, this section, and determined whether the \$30,000 tax estimate was based on a mistake since the actual liability was \$11,000; and determine if this was the mistake for which relief could be granted under Rule 60(b). *Thomas v. Thomas*, 119 Idaho 709, 809 P.2d 1188 (Ct. App. 1991).

#### —Mistake in Tax Liability.

Parties to property settlement made an excusable mistake of fact regarding the estimated amount of 1987 tax liability of \$30,000 which was actually \$11,000 and, therefore, settlement agreement should be modified by equal division of the difference between the estimated and actual tax liability. *Thomas v. Thomas*, 119 Idaho 709, 809 P.2d 1188 (Ct. App. 1991).

#### Effect of Decree.

Appellant wife, having submitted to the jurisdiction of the Idaho district court and having submitted her interest in the community estate to the trial court for determination, was bound by such determination, no appeal having been taken from the distribution of the community estate as allocated by the district court. *Porter v. Porter*, 84 Idaho 400, 373 P.2d 327 (1962).

#### Equal Interest of Spouses.

Right of divorced wife to her share of community estate arises from her equal rights in the property; her interest is of the same nature and extent as that of her husband. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

#### Findings of Court.

A requirement of specific findings in divorce cases demonstrates to the parties that the trial court has examined their case with due care and attention to the evidence; such a requirement also encourages a judge to rely upon objectively supportable grounds for his decision, and discourages subjective or atti-



tude-influenced perceptions of the case. *Donndelinger v. Donndelinger*, 107 Idaho 431, 690 P.2d 366 (Ct. App. 1984).

In all divorce cases where substantial equality is sought to be achieved not by splitting each asset, but by valuing the assets and allocating them in a manner designed to achieve a substantially equal, aggregate result, the trial judge must make findings concerning the value of each material asset; an asset or debt is "material" if it is sufficiently valuable to affect the substantial equality sought to be achieved by the decree. *Donndelinger v. Donndelinger*, 107 Idaho 431, 690 P.2d 366 (Ct. App. 1984).

A failure to state specific reasons justifying unequal property division was properly disregarded on appeal from a divorce action in which the sum total of the evidence demonstrated that the husband, as a profoundly disabled person, probably unemployable and saddled with ongoing expenses related to his condition, required a greater share of the community property to support himself, and the reasons clearly appeared from the record. *Hentges v. Hentges*, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

The magistrate did not err in failing to make specific findings as to the value of the property distributed. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991).

### **Foreign Divorce.**

It is conceivable, under this section, that court may deny relief to either party who has gone into another state and dissolved marital relations by constructive service of process and thereafter returned to state for purpose of being decreed interest in community property, where resident member challenges validity of proceedings in foreign state and sets up rights under local law. *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

This section does not apply to case where spouse has obtained divorce in foreign jurisdiction and claims interest in community property in state of marriage, unless other spouse contests validity of foreign divorce and shows that decree of foreign court is not entitled to full faith and credit in courts of domicil. *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

While Idaho court was required to give full faith and credit to Utah divorce decree and award of Utah home to wife, Idaho court's decision that husband was entitled to have wife's equity in the Utah home considered in the ultimate division of marital assets in wife's Idaho action was correct. *Beesley v. Beesley*, 114 Idaho 536, 758 P.2d 695 (1988).

### **Goodwill of a Business.**

A trial court may require a business's goodwill to be included in the sale. *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

When a family-owned business is sold to facilitate a property division in a divorce, the trial court must consider the unique character of goodwill along with the factors in this section to determine whether the goodwill asset should be divided equally; the unique nature of goodwill, its sale by means of a noncompetition clause, its varying importance to the separate individuals of the marital community, and the effect of its sale on the factors listed in this section may constitute compelling reasons to divide the value received for goodwill unequally. The court should also consider the tax consequences (if any) to the parties, vis-à-vis each other and vis-à-vis the buyer of the business, resulting from differing treatment, for tax purposes, of goodwill and of covenants not to compete. *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

On appeal from the disposition of property following a divorce decree, where the parties did not have an interest in the truck stop until after they were married, and all their labor on behalf of the business occurred during coverture, any goodwill value of the business was community property which should have been valued and distributed upon divorce. *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

### **Improvements to Separate Property.**

On the granting of a divorce to the wife on the ground of extreme cruelty, the community estate was entitled to be credited, and the husband's separate estate charged, with expenditures made from the community funds in the improvement of his separate property, but not with expenditures voluntarily made without cost to the community by his children, who were tenants on the property. *Malone v. Malone*, 64 Idaho 252, 130 P.2d 674 (1942).

Where wife used funds from sale of portion of land given her by her father prior to marriage to construct a dwelling on the remaining portion of the land, the husband was not entitled to an interest in the property on divorce based on expenditure of some of his funds in the property or expenditure of funds for family support, since such expenditures did not operate to change title of property owned by wife. *Heslip v. Heslip*, 74 Idaho 368, 262 P.2d 999 (1953).

Where husband would continue to get the benefit of the expenditure of community funds for improvements made to warehouse, it was equitable for the court to make an unequal award of assets based on the expenditure. *Smith v. Smith*, 124 Idaho 431, 860 P.2d 634 (1993).

### **In General.**

In action for divorce, question of the ownership of real estate will not be determined

unless divorce is granted. *Bell v. Bell*, 15 Idaho 7, 96 P. 196 (1908).

This section contemplates a complete division of community property, leaving the parties free of tangled interests. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

The division of property upon a decree of divorce is guided by the principle that it must be assigned as deemed just, with a substantially equal division in value unless there exist "compelling" reasons to order an unequal division. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

### **Jurisdiction of Court.**

Idaho court having personal jurisdiction of both parties may award wife the right to use and occupy the family residence in Washington; it has jurisdiction to enforce its mandate by coercion if necessary. *Stephens v. Stephens*, 53 Idaho 427, 24 P.2d 52 (1933).

When the divorce action is instituted, the court has the power to take jurisdiction of the community property and the homestead and to make all necessary and proper orders for its protection, and to prohibit the sale or other disposition of same without order of court until such time as the divorce action is heard and finally determined. *Benson v. District Court*, 57 Idaho 85, 62 P.2d 108 (1936).

Where wife sued divorced husband to recover insurance policy which was awarded her in divorce decree, husband could not attack decree collaterally on ground that divorce court did not have jurisdiction of policy where there was nothing in record to show the contrary. *Hartenbower v. Mutual Benefit Life Ins. Co.*, 67 Idaho 254, 175 P.2d 698 (1946).

The trial court in a divorce proceeding may enforce its orders regarding property distribution with contempt proceedings. *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

### **Method of Payment.**

Decree providing for payment of wife's share of community property in monthly instalments was modified to provide for payment in lump sum. *Beckstead v. Beckstead*, 50 Idaho 556, 299 P. 339 (1931).

Where giving each spouse sole and immediate control of his or her determined share of community property would work a hardship, trial court decree may provide that husband pay wife's community share in monthly instalments, secured by whatever means trial court deems proper. *Jackson v. Jackson*, 87 Idaho 330, 393 P.2d 28 (1964).

### **Postnuptial Agreement.**

In divorce suit where property rights are involved and postnuptial settlement is presented and relied upon as a settlement of all property rights, and such agreement is challenged on the ground that it is unfair and

inequitable and fraudulent, evidence must show clearly that the post nuptial settlement is in every way fair and unexceptionable on equitable grounds. *De Cloedt v. De Cloedt*, 24 Idaho 277, 133 P. 664 (1913).

### **Prenuptial debts.**

Where community funds were not used to enhance the value of husband's separate property, but were used to pay off husband's prenuptial debts and there was no claim of unfair dealing, the husband was not required to reimburse the community estate upon divorce. *Bliss v. Bliss*, 127 Idaho 170, 898 P.2d 1081 (1995).

### **Repossessed Property.**

Where the record in a divorce proceeding was inadequate as to what ultimately happened to a sailboat that was repossessed by a bank during the divorce proceeding, the magistrate erred in awarding the boat to the husband and charging its full market value against him in the division of community property, because the actual value of the boat to the community could not be ascertained until sale or other disposition of the boat in the proceedings commenced by the bank. *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982).

### **Retirement Benefits.**

An award of a lump sum to a nonemployee spouse may be a better remedy than retaining jurisdiction until the retiring spouse's rights in his pension plan have vested and making a division of the payments when received, where there are substantial amounts of other liquid assets and the retirement either has occurred, or where retirement is imminent, such as where the employee spouse is close to mandatory retirement age. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

Where the magistrate has set out to achieve equality, the decree will not be disturbed on appeal if it appears, upon substantial, albeit conflicting evidence, that the parties have received substantially equal shares. *Jones v. State*, 125 Idaho 294, 870 P.2d 1 (Ct. App.), cert. denied, 513 U.S. 838, 115 S. Ct. 121, 130 L. Ed. 2d 66 (1994).

The material assets of the parties must be identified, then it must be determined what assets are separate property and what assets are community property; the separate property assets should be specifically noted and allocated to the proper spouse, and the community property assets must be valued and distributed substantially equally unless the court finds compelling reasons otherwise. *Cummings v. Cummings*, 115 Idaho 186, 765 P.2d 697 (Ct. App. 1988).

The trial courts in Idaho should have broad discretion to fashion an equitable division of contingent retirement benefits upon dissolu-



tion of a marital community. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

Where the time for retirement is uncertain and where the value of the employee's monthly benefits is dependent upon the number of years of employment at retirement, which may not be known at the time of the divorce, and where maintenance of the pension benefits after divorce will be from the employee spouse's separate property, or the property of a subsequent community, a reasonably accurate calculation of the present value of the pension rights derived from community effort may not be possible, and the trial court should consider withholding the retirement rights from the property disposition and decreeing that the parties hold the rights to the benefits as tenants in common, then if and when the employee spouse does obtain retirement benefits the trial court can determine what portion of the rights were derived from community property and divide the payments accordingly. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

The legislature had authority to authorize the modification of divorce judgments in order to provide relief for those women affected by *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), a decision prohibiting state courts from dividing military retirement benefits according to state community property laws. *Ross v. Ross*, 117 Idaho 548, 789 P.2d 1139 (1990).

Although the "time rule" method of valuation of the community interest in pension plans could be employed, by calculating community interest in a retirement fund using a ratio of the duration of the marriage with the years of service, it has never been adopted nor held that the "time rule" is the only acceptable method. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

The evidence presented to the magistrate, which related to the value of the pension benefits, was in the form of account statements showing the contributions made during the marriage and the account balance at the time of marriage and at the time of divorce; any contributions, increases or earnings in the account which occurred prior to the marriage are separate property under § 32-903, and that portion of the account was reflected in the account balance at the time of marriage; therefore, by subtracting the account balance at the time of marriage from the account balance at the time of divorce, the portion of the contributions and the increases in the account which were acquired during the marriage are identified and there is a rebuttable presumption that all property acquired during marriage — in this case, contributions and increases in the account — is community property. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

Because wife in divorce action was awarded a sum equal to her interest in the military retirement benefits of her husband to be paid in installments, she was entitled to interest accrued at the rate used to discount the retirement benefits to their present value. *Balderson v. Balderson*, 127 Idaho 48, 896 P.2d 956 (1995), cert. denied, 516 U.S. 865, 116 S. Ct. 179, 133 L. Ed. 2d 118 (1995).

### **Review of Disposition.**

When a major portion of an award is found to have been made erroneously, it is only equitable that the trial court review the disposition of the community property and the allowance for the wife's support so that ultimate disposition of the property is fairly and equitably made with adequate allowance for the wife's support. *Stahl v. Stahl*, 91 Idaho 794, 430 P.2d 685 (1967).

### **Sale of Community Property.**

Where the community property was not susceptible of division, the trial court properly ordered it to be sold, the proceeds remaining after payment of liens and mortgages on the property and expenses of the sale to be divided equally between the parties. *Davis v. Davis*, 82 Idaho 351, 353 P.2d 1079 (1960).

The trial court properly treated a dwelling of parties to a divorce action as community property, ordering it to be sold and the separate property equity of \$2,500 therein which the wife had paid on the purchase price from her separate funds, to be paid to her prior to a division of the purchase price. *Nichols v. Nichols*, 84 Idaho 379, 372 P.2d 758 (1962).

### **Sale of Separate Property.**

A divorce decree may not compel one spouse to sell his or her separate property to the other spouse. *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985).

### **Separate Property.**

The community has no interest in the retained earnings of a corporation, the stock of which is held as separate property by one of the stockholders, unless the stockholder has sufficient control of the corporation to be able to cause the earnings to be retained; in this case, husband had only a 25% interest in the corporation; no community interest was created in his separate stock as the result of the retained corporate earnings, and the magistrate erred by holding otherwise. *Swope v. Swope*, 122 Idaho 296, 834 P.2d 298 (1992).

### **—Enhancement.**

There was substantial evidence to support trial court's finding of no enhancement in the value of husband's separate partnership interest; experts for both sides testified that the factors contributing to an increase in value of a business such as a bottling company in this case could not be separately identified. *Swope*



v. Swope, 122 Idaho 296, 834 P.2d 298 (1992).

### Stock.

Where the community owns stock in a closely held corporation, with majority control in one spouse and with virtually no public market for the stock, the simple division of the stock does little to completely separate the parties and their property. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

Trial court erred in equally dividing community stock in a closely held corporation with majority control in the husband and virtually no public market for the stock. Upon remand, if wife received a judgment for a monetary amount equivalent to the value of her shares, she was entitled to interest on any deferred payments at the judgment rate specified in § 28-22-104(2) and running from the date of judgment, not the date of divorce. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

Where the magistrate divided the soon-to-vest stock options, ordering that the wife have the right to exercise her share of the community options by paying the exercise price after the vesting date, the method was consistent with subsection (1)(a) of this section and furthered the policy of separating the parties' interests in the property, giving each immediate control over their interests in community property as that interest matures, while avoiding the inequitable distribution of the assets. *Batra v. Batra*, 135 Idaho 388, 17 P.3d 889 (Ct. App. 2001).

### Trust Property on Indian Reservation.

State courts have the power in divorce actions to award a non-Indian spouse recom-

pense for his or her portion of the community contribution used to purchase trust property located within the boundaries of an Indian reservation. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

The exceptions to state jurisdiction in 25 U.S.C. § 1322(b) and § 67-5103, dealing with federal trust properties, do not prevent the courts of this state from requiring that one party to a marriage recompense the other party for his or her share of the community contributions that have gone into property that is held in trust or subject to a restraint on alienation by the federal government. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

**Cited in:** *Reubelmann v. Reubelmann*, 38 Idaho 159, 220 P. 404 (1923); *Radermacher v. Sutphen*, 60 Idaho 529, 92 P.2d 1070 (1939); *Rose v. Rose*, 82 Idaho 395, 353 P.2d 1089 (1960); *Huskinson v. Huskinson*, 92 Idaho 920, 453 P.2d 569 (1969); *Phillips v. Phillips*, 93 Idaho 384, 462 P.2d 49 (1969); *Wyatt v. Wyatt*, 95 Idaho 391, 509 P.2d 1312 (1973); *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976); *Guy v. Guy*, 98 Idaho 205, 560 P.2d 876 (1977); *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977); *Golder v. Golder*, 110 Idaho 57, 714 P.2d 26 (1986); *Vail v. Vail*, 117 Idaho 520, 789 P.2d 208 (Ct. App. 1990); *Ellis v. Ellis*, 118 Idaho 468, 797 P.2d 868 (Ct. App. 1990); *Badell v. Badell*, 122 Idaho 442, 835 P.2d 677 (Ct. App. 1992); *Huerta v. Huerta*, 127 Idaho 77, 896 P.2d 985 (Ct. App. 1995); *Larson v. Larson*, 139 Idaho 970, 88 P.3d 1210 (2004).

## RESEARCH REFERENCES

**Am. Jur.** — 15A Am.Jur.2d, Community Property, § 1 et seq.

**C.J.S.** — 27B C.J.S., Divorce, § 857.

**A.L.R.** — Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 A.L.R.3d 176.

Spouse's professional degree or license as

marital property for purposes of alimony, support or property settlement. 4 A.L.R.4th 1294.

Effect of trial court giving consideration to needs of children in making property division — modern status. 19 A.L.R.4th 239.

Division of lottery proceeds in divorce proceedings. 124 A.L.R.5th 537.

**32-713. Community property and homestead — Order for disposition.** — The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds. [1875, p. 635, § 12; R.S., § 2481; reen. R.C. & C.L., § 2671; C.S., § 4651; I.C.A., § 31-713.]

JUDICIAL DECISIONS

ANALYSIS

Allocation of property.  
Jurisdiction.  
Order held proper.

Allocation of Property.

By exercising discretion in ordering the parties' real estate partitioned, the magistrate caused a loss in value of the community property which could not be allocated as part of the property division. *Larson v. Larson*, 139 Idaho 970, 88 P.3d 1210 (2004).

Jurisdiction.

Where at the time of the divorce the court did order a sale of the residence, but delayed the sale until the wife remarried or removed herself from the property and the husband did not appeal the divorce decree that included this provision, the district court, in ruling on a suit brought by the husband seeking the value of his interest in the residence, had no jurisdiction to consider anew a sale of the residence. *Olsen v. Olsen*, 115 Idaho 105, 765 P.2d 130 (1988).

Order Held Proper.

An award of alimony to the wife in the amount of \$110 a month until the husband

paid the wife one-half of the net value of the community property, together with \$700 attorney's fee, or until the community property was sold and money arising therefrom disbursed as conditionally provided for in the decree, and in the amount of \$50 a month after division of community property and payment of attorney's fee, was not disturbed, where husband was owner of valuable encumbered property. *Malone v. Malone*, 64 Idaho 252, 130 P.2d 674 (1942).

In an effort to avoid additional expense, it was a reasonable exercise of the court's equitable powers to allow a divorced husband 90 days to effect and account for the sale of the mortgaged community home before a receiver would be appointed to sell the home. *Shepard v. Shepard*, 94 Idaho 734, 497 P.2d 321 (1972).

**Cited in:** *Rose v. Rose*, 82 Idaho 395, 353 P.2d 1089 (1960); *Huskinson v. Huskinson*, 92 Idaho 920, 453 P.2d 569 (1969); *Phillips v. Phillips*, 93 Idaho 384, 462 P.2d 49 (1969).

RESEARCH REFERENCES

**A.L.R.** — Division of lottery proceeds in divorce proceedings. 124 A.L.R.5th 537.

32-713A. Modification of divorce decree — Effective date. [Repealed.]

STATUTORY NOTES

**Compiler's Notes.** — This section which comprised I.C., § 32-713A, as added by S.L. 1987, ch. 68, § 1, was repealed by S.L. 1987, ch. 68, § 1 (4), p. 122.

**32-714. Community property and homestead — Revision on appeal.** — The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [1875, p. 635, § 12; R.S., § 2482; reen. R.C. & C.L., § 2672; C.S., § 4652; I.C.A., § 31-714.]

JUDICIAL DECISIONS

ANALYSIS

Award by appellate court.  
Decree not final.  
Determination of value.  
Discretion of trial and appellate courts.

In general.  
Method of payment.  
—Interest.

### **Award by Appellate Court.**

Supreme court, which on appeal found that the plaintiff was entitled to a divorce from common-law marriage on the ground of extreme cruelty, awarded the plaintiff one half of the value of accumulated property on land leased from the government though the defendant was indebted on the lease in the amount of \$2,500 and owed other debts aggregating \$1,500. *Warner v. Warner*, 76 Idaho 399, 283 P.2d 931 (1955) (Decision prior to 1965 amendment of § 32-712).

Court on appeal modified decree of distribution where appellant was granted a divorce on charge of cruelty by awarding value of house in which appellant was living at time of marriage to appellant as her individual property, and awarding appellant 50 percent of stock sold and check given respondent. *O'Brien v. O'Brien*, 73 Idaho 64, 245 P.2d 785 (1952).

Where husband was awarded more than his share in community personal property the supreme court modified decree by providing that husband pay fees of wife's attorney. *Heslip v. Heslip*, 74 Idaho 368, 262 P.2d 999 (1953).

### **Decree Not Final.**

Decree vesting title of corporation stock in husband for purpose of securing new certificates, 50 percent of which were to be in name of husband and 50 percent in name of wife, was not a final decree, since decree of distribution was subject to revision by Supreme Court on appeal. *O'Brien v. O'Brien*, 71 Idaho 468, 233 P.2d 1030 (1951).

### **Determination of Value.**

Supreme court on appeal determined the respective interests of parties to community property, but since value of the property could not be determined from the record, the case would be remanded to the trial court for determination of value and to hear any further evidence that the parties might desire to submit. *Prophet v. Peterson*, 77 Idaho 257, 291 P.2d 290 (1955).

### **Discretion of Trial and Appellate Courts.**

An appellate court can modify decree of distribution where divorce is granted on grounds of extreme cruelty or adultery, since in such cases its discretion is superior to discretion of trial court. *O'Brien v. O'Brien*, 73 Idaho 64, 245 P.2d 785 (1952) (Decision prior to 1965 amendment of § 32-712).

Where a divorce is granted on the ground of extreme cruelty, the division and disposition of the community property is committed to the discretion of the trial judge primarily and

in the first instance, subject to the paramount and superior discretion of the appellate court. *Jordan v. Jordan*, 75 Idaho 512, 275 P.2d 669 (1954) (Decision prior to 1965 amendment of § 32-712).

The supreme court has paramount discretion in the division and distribution of community property in a divorce granted on the ground of extreme cruelty. *Warner v. Warner*, 76 Idaho 399, 283 P.2d 931 (1955) (Decision prior to 1965 amendment of § 32-712).

If a divorce is granted on the ground of extreme cruelty, the disposition of the community property is committed to the discretion of the trial court subject to the superior discretion of the appellate court, and more than one half may be awarded nonoffending spouses. *Empey v. Empey*, 78 Idaho 25, 296 P.2d 1028 (1956); *Davis v. Davis*, 82 Idaho 351, 353 P.2d 1079 (1960) (Decision prior to 1965 amendment of § 32-712).

When a marriage is dissolved by decree on the grounds of adultery or extreme cruelty, the trial court has jurisdiction to assign the community property to the respective parties in such proportions as the trial court or the condition of the parties deems just. The decree in such cases is subject to revision on appeal in all particulars including those which are stated to be in the discretion of the court. *Linton v. Linton*, 78 Idaho 355, 303 P.2d 905 (1956) (Decision prior to 1965 amendment of § 32-712).

Where a divorce is granted on grounds of extreme cruelty, the disposition of the community property is committed to the discretion of the trial judge in the first instance, subject, however, to the paramount and superior discretion of the appellate court, and more than one half may be awarded non-offending spouse. *Farmer v. Farmer*, 81 Idaho 251, 340 P.2d 441 (1959) (Decision prior to 1965 amendment of § 32-712).

The division of community property between parties to a divorce action by the court is subject to the paramount and superior discretion of the Supreme Court who on appeal may in the exercise of such discretion award a larger portion of the community property to the unoffending spouse. *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020 (1961) (Decision prior to 1965 amendment of § 32-712).

Where a divorce is granted on the ground of extreme cruelty, the court may divide the community property between the parties in such amounts as in its discretion it may determine to be fair and equitable having regard to the circumstances of the parties. *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020



(1961) (Decision prior to 1965 amendment of § 32-712).

Where trial court granted respondent husband the divorce on the ground of extreme cruelty and awarded appellant only 25 percent of community property, such award was subject to revision on appeal to the paramount and superior discretion of the appellate court. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964) (Decision prior to 1965 amendment of § 32-712).

#### **In General.**

Where findings of trial court are based on substantial, competent, although in instances conflicting, evidence, they will not be disturbed on appeal. *Davis v. Davis*, 82 Idaho 351, 353 P.2d 1079 (1960).

#### **Method of Payment.**

Ordinarily, trial court should give each spouse the sole and immediate control of his or her determined share of community property; however, best interest of the parties may require an award to be paid in instalments, rather than in lump sum. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964).

#### **—Interest.**

Wife was entitled to interest from date of divorce decree on amount of her funds used by her husband in acquiring a garage business. *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954).

Where the financial statement showed that a lump sum settlement would necessitate an additional loan or forced sale of community assets, but farming operations showed sufficient net income to pay by instalments, trial court did not err in its decree dividing the community property with appellant's award in annual payments over an extended period; however, failing to provide that the deferred instalment payments bear interest at the legal rate of six percent per annum was error. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964).

**Cited in:** *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964); *McNett v. McNett*, 95 Idaho 59, 501 P.2d 1059 (1972); *Parker v. Parker*, 95 Idaho 876, 522 P.2d 788 (1974); *Rankin v. Rankin*, 107 Idaho 621, 691 P.2d 1236 (1984); *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985).

**32-715. Jurisdiction of actions.** — Exclusive original jurisdiction of all actions and proceedings under this chapter is in the district court, but a judge thereof at chambers may make all necessary orders to carry out the provisions of this chapter; and the powers and jurisdiction granted district judges by section 1-901 shall apply to proceedings under this chapter. [1875, p. 169, § 1; R.S., § 2483; reen. R.C. & C.L., § 2673; C.S., § 4653; I.C.A., § 31-715; am. 1937, ch. 210, § 1, p. 357.]

### **STATUTORY NOTES**

**Compiler's Notes.** — Section 1-901 referred to in this section was repealed. See Idaho Rules of Civil Procedure, Rule 77(a).

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Alimony and suit money.  
Child custody.  
Venue.

#### **Alimony and Suit Money.**

Motion for alimony must be heard in county or district in which action is pending. Supreme court does not have original jurisdiction in such matters, and such orders are made by supreme court only when necessary to complete exercise of its appellate jurisdiction. *Callahan v. Dunn*, 30 Idaho 225, 164 P. 356 (1917); *Enders v. Enders*, 34 Idaho 381, 201 P. 714 (1921); *Hay v. Hay*, 40 Idaho 624, 235 P. 902 (1925).

Original jurisdiction in matters of granting

alimony and suit money in connection with divorce actions is vested in district courts or judges thereof at chambers. *Taylor v. Taylor*, 33 Idaho 445, 196 P. 211 (1921); *Enders v. Enders*, 34 Idaho 381, 201 P. 714 (1921); *Hay v. Hay*, 40 Idaho 624, 235 P. 902 (1925).

This section vests in district court original jurisdiction to require husband, during pendency of appeal from judgment in divorce action, to pay alimony and suit money in prosecuting or defending appeal. *Vollmer v. Vollmer*, 43 Idaho 395, 253 P. 622 (1927).

Order of district court granting alimony is appealable. *Vollmer v. Vollmer*, 43 Idaho 395, 253 P. 622 (1927).

#### **Child Custody.**

District court has jurisdiction of care, custody, and education of minor children of divorced parents. *Gifford v. Gifford*, 50 Idaho 517, 297 P. 1100 (1931).

This section confers jurisdiction on the district court in all divorce actions. The trial court has power to provide for the care and custody of the children and of the property pending the suit until entry of final decree, so as to preserve the property from removal, waste or dissipation pending suit. *Benson v. District Court*, 57 Idaho 85, 62 P.2d 108 (1936).

The jurisdiction of the trial court over child custodial and visitation rights is a continuing one and should be exercised by the court in such detail and specificity of order as may be necessary to carry out the intent of the court. *Dey v. Cunningham*, 93 Idaho 684, 471 P.2d 71 (1970).

Where the probate court declared children, of which the district court had granted the custody to the mother in a divorce action, to be dependent and neglected and placed them in a children's home, in an action to which

neither parent was a party, the district court properly adopted a writ of habeas corpus as a suitable means for inquiring into and determining the right of custody settlement of such children. *Spaulding v. Children's Home Finding & Aid Soc'y*, 89 Idaho 10, 402 P.2d 52 (1965).

Since a district court has jurisdiction not only of the divorce proceedings, but continuing jurisdiction over questions involving the custody of minor children, it was acting within its jurisdiction when it found divorced wife in contempt for refusing divorced husband his child visitation rights, so that a writ of prohibition was improperly sought, improvidently issued, and was quashed. *Dey v. Cunningham*, 93 Idaho 684, 471 P.2d 71 (1970).

#### **Venue.**

This section and §§ 32-702 and 32-704 do not bear on venue but, instead, § 5-404 governs in divorce cases. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938).

**Cited in:** *In re Miller*, 4 Idaho 711, 43 P. 870 (1896); *Radermacher v. Sutphen*, 60 Idaho 529, 92 P.2d 1070 (1939); *Ex parte Cole v. Cole*, 68 Idaho 257, 193 P.2d 395 (1948); *Phillips v. Phillips*, 93 Idaho 384, 462 P.2d 49 (1969).

### **RESEARCH REFERENCES**

**Am. Jur.** — 24 Am.Jur.2d, Divorce and Separation, §§ 196 et seq., 206.

**32-716. Reconciliation proceedings.** — No hearing on the merits upon grounds for divorce shall be held in any action for divorce, and no final decree of a court of competent jurisdiction shall be entered in any such case, except as hereinafter provided, until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days, or at any time subsequent and prior to entry of final decree therein, the court, upon application of one (1) of the parties, may require a conference of the parties with a person or persons of his choosing, or persons selected by the court, in order to determine whether or not a reconciliation between the parties is practicable; provided, however, that nothing herein shall prevent the court from making such interim orders as may be just and equitable; provided, further, that nothing herein shall prevent the court from proceeding to try the matter on the merits and enter a final decree of divorce upon the agreement of both parties and with both parties present in person or represented by counsel at such trial.

In any action of divorce where grounds for divorce have been established, if the court finds that attempts at reconciliation are practicable and to the best interest of the family, the court may stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

The reconciliation procedures herein provided shall not be construed as a condonation on the part of either spouse of acts that may constitute grounds for divorce. [I.C., § 32-716, as added by 1971, ch. 21, § 1, p. 34.]

**32-717. Custody of children — Best interest.** — (1) In an action for divorce the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. The court shall consider all relevant factors which may include:

- (a) The wishes of the child's parent or parents as to his or her custody;
- (b) The wishes of the child as to his or her custodian;
- (c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;
- (d) The child's adjustment to his or her home, school, and community;
- (e) The character and circumstances of all individuals involved;
- (f) The need to promote continuity and stability in the life of the child; and
- (g) Domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

(2) If the parent has a disability as defined in this section, the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Evaluations of parental fitness shall take into account the use of adaptive equipment and supportive services for parents with disabilities and shall be conducted by, or with the assistance of, a person who has expertise concerning such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(3) In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interests of the child.

(4) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be



determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(5) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what effect, if any, the court finds the disability has on the best interests of the child.

(6) With reference to this section, when an active member of the Idaho national guard has been ordered or called to duty as defined in section 46-409, Idaho Code, such military service thereunder shall not be a substantial or material and permanent change in circumstance to modify by reducing the member's previously decreed child custody and visitation privileges. [1875, p. 639, § 7; R.S., § 2473; reen. R.C. & C.L., § 2663; C.S., § 4643; I.C.A., § 31-705; am. and redesi. 1980, ch. 378, § 3, p. 961; am. 1992, ch. 228, § 1, p. 678; am. 1995, ch. 128, § 1, p. 561; am. 2002, ch. 232, § 1, p. 663; am. 2003, ch. 250, § 1, p. 648.]

### STATUTORY NOTES

**Cross References.** — Annulment of marriage, custody of children, § 32-504.

Child custody jurisdiction and enforcement act, § 32-11-101 et seq.

Modification of support provisions, § 32-709.

Separation without divorce, custody of children, § 32-1005.

**Prior Laws.** — This section was formerly compiled as § 32-705.

**Effective Dates.** — Section 3 of S.L. 2003,

ch. 250 provided: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect when the Governor enters an order, and files it with the Secretary of State, calling or ordering members of the Idaho National Guard to state active duty or to Title 32 U.S.C. duty other than for training as defined in Section 46-409, Idaho Code, or on July 1, 2003, whichever occurs first."

### JUDICIAL DECISIONS

#### ANALYSIS

Agreements between parents.

Attorney fees.

Best interest of child.

Child support.

—Modification of support provisions.

Custody.

—Award held improper.

—Award held proper.

—Divided custody.

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—Modification of custody and visitation provisions.

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—Tender years doctrine.

- Visitation rights.
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- In general.
- Jurisdiction of court.
- Domicil of child.
- Modification of decree.
- Motion to relocate.
- Permissive intervention.
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- Procedure.
- Burden of proof.
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- Findings.
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- Request for relief.
- Testimony of children.
- Religious training.
- Removal of child from state.
- Res judicata.
- Separation agreement.
- Third party custodian.

### **Agreements Between Parents.**

Previous agreement between husband and wife does not prevent court from making order for custody of minor children. *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1951).

As between husband and wife, agreement touching custody and maintenance of children will be respected and enforced, but such agreement cannot, as against the children, divest either parent of the duty imposed upon both by law to support and educate them. *Beard v. Beard*, 53 Idaho 440, 24 P.2d 47 (1933).

Consent decrees must conform to the agreement of the parties subject to such inherent powers of the court on matters concerning the welfare of the child and subject to its continued jurisdiction to modify support payments under changed conditions. *Fisher v. Fisher*, 84 Idaho 303, 371 P.2d 847 (1962).

The court's jurisdiction over minor children is not lost by a property settlement agreement between the parents which is incorporated into the divorce decree. *Patton v. Patton*, 88 Idaho 288, 399 P.2d 262 (1965).

The husband's delinquency in payments to the wife for support of their children was an obligation due the wife to compensate her for her past support of such children, but agreement by her to release former husband from back support payments for a consideration was valid and enforceable. *Andersen v. Andersen*, 89 Idaho 551, 407 P.2d 304 (1965).

### **Attorney Fees.**

Where mother acted on behalf of child in defending against father's motion to modify the original decree of divorce, inasmuch as father sought modification of his obligation to continue the payments of child support, and where, at such time, child was mother's ad-

judged dependent and father was moving party, mother was entitled to reasonable attorney fees and allowance of costs. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

### **Best Interest of Child.**

In determining the custody of a minor child, the child's welfare and best interest is of paramount consideration. *Roosma v. Moots*, 62 Idaho 450, 112 P.2d 1000 (1941); *Fish v. Fish*, 67 Idaho 78, 170 P.2d 802 (1946).

In determining custody and right of visitation of minor child, the welfare and best interest of such child is paramount. *Arkoosh v. Arkoosh*, 66 Idaho 607, 164 P.2d 590 (1945).

Father, by reason of his failure to purge himself of his contempt by payment or valid excuse, was in no position as the moving party to question the court's order as to custody; however, the welfare of the children was paramount to, and independent of, his situation. *Brown v. Brown*, 66 Idaho 625, 165 P.2d 886 (1946).

It is well settled, in this jurisdiction, that in awarding the care, custody and education of minor children, the best interest and welfare of the children is of paramount importance. *Maudlin v. Maudlin*, 68 Idaho 64, 188 P.2d 323 (1948).

Court, in exercising its discretion in awarding custody of children, will consider as a paramount factor the welfare and best interest of the child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

The welfare and best interest of the minor children are of paramount consideration. *Empey v. Empey*, 78 Idaho 25, 296 P.2d 1028 (1956).

The welfare and best interests of the minor children are the matters of paramount importance to be considered by the court in deter-

mining their custody. *Schmitt v. Schmitt*, 83 Idaho 300, 362 P.2d 884 (1961).

The welfare of the child is the paramount consideration and controlling factor in determining the child's custody. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

The personal desires of the parent and even the wishes of a minor child must yield to the determination of what is best for the child's ultimate good. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

Of paramount importance in determining custody is the children's welfare and best interests. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

In determining custody, a child's welfare and best interests are of paramount importance. *Roeh v. Roeh*, 113 Idaho 557, 746 P.2d 1016 (Ct. App. 1987).

Magistrate was within his discretion in awarding the mother sole legal and physical custody of the children where the record contained substantial and competent evidence that the father's refusal to communicate with the mother, as well as the difficulty of the joint custodial arrangement, were detrimental to the children's best interests. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

It is appropriate for a trial judge to review the living arrangements of a child as part of a review of what is in the best interests of the child and that such a review may include a consideration of persons with whom a parent intends to reside. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

When one parent refuses to communicate with the other in a joint custody setting, where essential decisions involving the care of the children are continually necessary, the best interests of the children are obviously detrimentally affected. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

### **Child Support.**

Husband who earned an average of \$4,000 a year was required to pay the sum of \$28 each month for the support of each of his children, and in the event of sickness to pay the hospitalization and doctor expenses. *Empey v. Empey*, 78 Idaho 25, 296 P.2d 1028 (1956).

The court is authorized to make provision for the support and education of the children of the marriage and, in so doing, to subject the community property to that purpose and to require security therefor and enforce the same by receiver or by any other remedy applicable to the case. The establishment of a trust of community property was an applicable remedy and a method of subjecting that property to the support and education of the children, and was within the jurisdiction of the court. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

In fixing the amount to be paid under the obligation of child support, of primary consideration is the financial ability of the payor. Additionally, in fixing the amount of the payments for child maintenance, not only should the order be predicated upon the payor's ability to pay, but upon the necessity of the child or children. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

In considering the amount to be awarded for support, regard should be given to the social position of the persons involved and award be sufficient to permit a standard of living commensurate with that to which they were accustomed; however, the necessities of the children and the financial ability of the payor to provide are primary considerations. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

In view of trial court's uncertainty as to the future earnings of the divorced husband, its award of \$100 per month for the maintenance of each of four children would not be disturbed. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

### **—Modification of Support Provisions.**

Where divorce is granted for offense of husband and award is made for support of wife and child and thereafter an application is made under the provisions of this section for a modification of the decree upon the ground of permanent change in the circumstances of the parties since the entry of the decree, the court will, in the exercise of sound judicial discretion, make such modification of the decree as justice and the changed circumstances of the parties demand. *Ashton v. Ashton*, 59 Idaho 408, 83 P.2d 991 (1938).

The authority to modify a divorce decree so as to increase the maintenance allowed for a minor child could be exercised only upon a showing of material, permanent, and substantial change in the circumstances and conditions of the parties. *Fish v. Fish*, 67 Idaho 78, 170 P.2d 802 (1946).

Where decree "approved, confirmed and ratified" a property settlement agreement providing for support of children at the amount of \$150 monthly, the court had jurisdiction thereafter to enter an order reducing amount to \$125 monthly. *In re Martin*, 76 Idaho 179, 279 P.2d 873 (1955).

A modification of child support provisions on ground of change of circumstances where father was injured and child had a car and a job would not be reversed without a clear abuse of the trial court's discretion. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

If in the future it could be shown that the allowance specified was not adequate to provide maintenance such as the children were entitled to, and the parent's income justified an increase, trial court which granted the



original award had authority to grant appropriate relief. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

### **Custody.**

Custody of minor children should be awarded to one of the parents unless both are unfit or unable to care for them. *Piatt v. Piatt*, 32 Idaho 407, 184 P. 470 (1919).

In case of doubt, custody of a child of tender age or a girl will be awarded to the mother. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Mother will not be deprived of custody of a child unless the proof clearly shows that she is an unfit person for custody of the child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Father has duty to provide for child, hence failure to fulfill duty will be weighed against him in determining custody of child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Superior right of mother to custody of child cannot be defeated merely on the argument that father has a superior economic position. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

All other considerations being equal, a mother will not be deprived of the custody of a child of tender years unless it clearly appears that the welfare of the child demands it. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

A child's preference for one parent becomes particularly important as the child grows older and more intelligent and, in determining a child's custody, a child's preference should be considered as persuasive, although not controlling. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

Where children in the custody of one parent have attempted to see the other parent, the court must weigh the effects of this behavior, together with the ability of the parents to cope with the situation, the hostility which would be generated by each custody choice and all other relevant circumstances. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

Although uprooting the child every two weeks to travel and live in alternating locations with alternating people raised serious concerns as to the welfare of the child, there was evidence in the record from the expert supporting the decision of the trial court; therefore, it did not abuse its discretion when it ordered equal joint physical custody between the mother and father. *State v. Hart*, — Idaho —, — P.3d —, 2006 Ida. LEXIS 41 (Mar. 22, 2006).

### **—Award Held Improper.**

Evidence concerning mother's epilepsy, which was controlled to a degree through medication, her need for nine to ten hours of

sleep per night, her migraine headaches and her post-seizure lack of energy, did not sufficiently support court's finding that it was in the best interest of the children to vest custody in the father, and award of custody to father constituted an abuse of discretion. *Moye v. Moye*, 102 Idaho 170, 627 P.2d 799 (1981).

Where the trial court relied almost exclusively in its findings of fact upon evidence that was extremely remote in time, and there was no nexus between the mother's past conduct and present behavior on the mother-child relationship, the magistrate relied upon impermissible factors in his fitness determination under subdivision 5 (now subdivision (1)(e)) of this section, and he failed to make findings based on substantial evidence relevant to the best interests of the child; therefore, the decision of the magistrate court was vacated and the matter remanded for redetermination of the custody question. *Roeh v. Roeh*, 113 Idaho 557, 746 P.2d 1016 (Ct. App. 1987).

### **—Award Held Proper.**

Awarding custody of child of tender years to its father on evidence that father was better fitted to care for and educate child did not constitute abuse of discretion authorizing appellate court to interfere. *Olson v. Olson*, 47 Idaho 374, 276 P. 34 (1929).

Trial court properly concluded that the interests and welfare of the children would best be served by allowing them to remain with their father, where evidence established that their mother had indulged in scandalous conduct and that both boys asked to live with their father. *Lawson v. Lawson*, 87 Idaho 444, 394 P.2d 1008 (1964).

It was not an abuse of discretion to award custody of an eleven-year-old daughter and three-year-old son to the mother and permit twenty-year-old and nineteen-year-old sons to choose the parent with whom they desired to live. *Loveland v. Loveland*, 91 Idaho 400, 422 P.2d 67 (1967).

Awarding the legal custody and control of minor children to the husband and actual custody to the wife under the particular circumstances was not an abuse of discretion. *Saviers v. Saviers*, 92 Idaho 117, 438 P.2d 268 (1968).

There was no abuse of discretion in awarding custody of the children to the wife on evidence that they were much happier and more well-adjusted when they were in her sole care than when they were with the husband and on failure of the husband, who was a military officer, to show how he could care for the children on a permanent basis, notwithstanding his being subject to military orders at all times. *Barker v. Barker*, 92 Idaho 204, 440 P.2d 137 (1968).

In a custody hearing involving a four-year-old retarded child, evidence that the mother had been married and divorced six times, had travelled from state to state in her employment, and had been employed by a circus, did not establish that the child would clearly be better off with the father as opposed to the mother. *Barrett v. Barrett*, 94 Idaho 64, 480 P.2d 910 (1971).

Magistrate did not abuse his discretion in awarding custody of the two sons to their father where the magistrate made extensive findings on the issue of custody, including finding as to fitness of both parents, and those findings were supported by substantial, although conflicting evidence. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

Magistrate's conclusions that child was educationally deprived, that mother unreasonably excluded biological father from son's life, that mother could not properly meet son's needs as an adolescent, that mother's visitation rights should be limited and that son's best interests would be served under this section if both his legal and physical custody were awarded to biological father, were supported by substantial evidence. *Miller v. Mangus*, 126 Idaho 876, 893 P.2d 823 (Ct. App. 1995).

In a divorce action, the magistrate did not abuse his discretion in awarding primary physical custody of the parties' child to the husband, because the wife demonstrated disregard for the court's orders, she demonstrated a propensity for dishonesty, she had difficulty controlling her anger and had sometimes unreasonably prevented visitation between the father and the child, she sometimes drank to excess and used alcohol together with prescription antidepressants, and she suffered intermittently from depression. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

#### —Divided Custody.

While divided custody of children should not be encouraged, nevertheless an award of divided custody is not an abuse of discretion where justifying circumstances appear. *Merrill v. Merrill*, 83 Idaho 306, 362 P.2d 887 (1961).

The trial court did not abuse its discretion in granting divided custody of the children in view of the mother's plan to remove some distance from the place of the father's employment causing the court to entertain an apprehension of estrangement of the children from the father. *Merrill v. Merrill*, 83 Idaho 306, 362 P.2d 887 (1961).

An award of the sole care, custody and education of the minor children of the parties to the plaintiff, subject to reasonable visitation rights of the husband, with a proviso that

if she move outside of her husband's residence area, he should have the custody of the children for a two-month period during the school vacation, was not an abuse of discretion. *Merrill v. Merrill*, 83 Idaho 306, 362 P.2d 887 (1961).

Where the court found each of the parties to be a fit and proper person to be awarded the care, custody and control of the children, the best interests of the children would not be adversely affected by permitting the children, whose custody was awarded to the mother, to visit their father for at least 60 days during the summer months. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

#### —Factors Considered.

Consideration of the relationship between children and their paternal grandparents was valid since it reflected on the children's adjustment to their home and community — factors which this section lists as factors which may be considered. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

The wishes of young children should not constitute the determining factor in a decision as to custody; the magistrate did not violate this rule of law where he stated that due to the ages of the children, their wishes, while persuasive, were not considered as the dominant reason for the custody determination and were not dispositive of the issue. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

Mother's actions in removing her son from the state and, in the magistrate's evaluation, holding him hostage, reflected badly on her overall integrity, as did lying about the reasons she left the state and where magistrate determined that the mother had exaggerated the degree to which the father had a violent temper in an attempt to justify her removal of the child from the state, in considering this issue, along with the factors set out in this section, the magistrate did not abuse its discretion in granting custody to mother and father with father being awarded primary residential custody. *Dymitro v. Dymitro*, 129 Idaho 527, 927 P.2d 917 (Ct. App. 1996).

Magistrate judge did not err in considering a wife's adultery in deciding whether the wife or the husband was entitled to custody of the minor children; the judge did not award the husband custody to punish the wife, nor did the judge find that the adultery rendered the wife an unfit parent, but the judge did find that the wife's openly adulterous relationship had a negative impact on the family, which weighed in favor of the husband being awarded custody. *Gustaves v. Gustaves*, 138 Idaho 64, 57 P.3d 775 (2002).

Magistrate did not wrongly base his decision to award the mother sole legal and phys-



ical custody of the children based on the father's homosexuality. There were no allegations here that the children had been harmed by the father's homosexuality, and the magistrate judge did not rely on that factor in his custody determination. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

Homosexual parent may not be denied custody of a child unless there is sufficient evidence presented to show that the parent's homosexuality is having a negative effect on the child and that the parent's custody is not in the best interests of the child. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

Sexual orientation, in and of itself, cannot be the basis for awarding or removing custody. Only when the parent's sexual orientation is shown to cause harm to the child, such that the child's best interests are not served, should sexual orientation be a factor in determining custody. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

#### **—Modification of Custody and Visitation Provisions.**

Order modifying divorce decree by awarding custody of children to maternal grandparents could not be affirmed in absence of evidence of fitness and willingness of such grandparents to have custody of the children, though evidence sustained finding that neither parent was entitled to custody. *Brown v. Brown*, 66 Idaho 625, 165 P.2d 886 (1946).

Custody orders are necessarily subject to the control of the court, do not become final, and may be modified or changed from time to time as the best interests of the child may appear. *Smith v. Smith*, 67 Idaho 349, 180 P.2d 853 (1947).

No clear abuse of discretion on the part of the trial court appears in modifying a decree of divorce awarding the mother custody of a child so as to award its custody during the summer vacation to the father. *Smith v. Smith*, 67 Idaho 349, 180 P.2d 853 (1947).

A divorce decree granting a minor child's custody to the mother during the school year and to the father during the summer vacation was modified to give each parent the right of visitation and of making presents to said child while in the other parent's custody. *Smith v. Smith*, 67 Idaho 349, 180 P.2d 853 (1947).

Where custody of children was awarded wife in divorce decree and parties later entered into an agreement wherein the wife agreed to surrender the custody to the husband, the court could not sanction such modification until an application was filed showing a material, permanent and substantial change in circumstances and condition of the parties since the date of the original decree. *Maudlin v. Maudlin*, 68 Idaho 64, 188 P.2d 323 (1948).

Where court modified divorce decree rela-

tive to care, custody and education of minor children, without apparent abuse of discretion, and the judgment was supported by abundant evidence, such judgment would not be disturbed. *Maudlin v. Maudlin*, 68 Idaho 64, 188 P.2d 323 (1948).

Where father under original decree of divorce was awarded custody of son and was taking care of son in an excellent manner and where mother had visited son only a few times and, if awarded custody, would take the child out of the state, the trial court did not abuse its discretion in refusing to modify decree on petition by mother for custody of child. *Jeppson v. Jeppson*, 75 Idaho 219, 270 P.2d 437 (1954).

Where there was a marked improvement in the attitude of defendant mother of the child in regard to her responsibilities as a mother, it might be such a material permanent change in conditions as would warrant modification of the custody decree, especially where there was a finding that the physical and mental health of the child would be best protected by such change. *McMurtrey v. McMurtrey*, 84 Idaho 314, 372 P.2d 403 (1962).

Modification of a decree awarding custody of minor children to a parent who is a fit and proper person to have such custody, is proper where it appears that the custodial parent has contrived to prevent the other parent from seeing and visiting such children in the manner and spirit provided for in the decree and has shaken their love and affection for the other parent. *Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

Where, subsequent to the divorce, the father moved to California, the mother remarried, her new husband was hostile to the father, and the mother sought to restrict the father's visit with the children to one hour the second and fourth Mondays of each month in her home, there was a change of conditions, and it was not an abuse of discretion for the court to modify the decree with respect to the father's visitation rights with respect to the children. *Dawson v. Dawson*, 90 Idaho 234, 409 P.2d 434 (1965).

Where, on a finding that the wife drank heavily, spent her evenings on late dates, and associated with her mother whom the court considered a bad influence, the divorce court awarded custody of the infant daughter of the parties to the husband, who subsequently remarried a widow with one child and who cared for the daughter, denial of the wife's petition for change of custody on the ground that she had remarried and quit her drinking was not an abuse of discretion. *Bryant v. Bryant*, 92 Idaho 76, 437 P.2d 29 (1968).

Decision of trial court changing custody of minor children of divorced parents from father to mother was abuse of discretion where



father and present wife were and had been fit and proper persons to have custody; where mother and her present husband, though apparently rehabilitated, had not in the past been fit and proper persons, and might retrogress; where change was ordered partly for welfare of mother, rather than children; and where mother intended to remove children from state and court's jurisdiction. *Tomlinson v. Tomlinson*, 93 Idaho 42, 454 P.2d 756 (1969).

Petition for modification of decree of child custody will not be granted unless petitioner shows that a material, permanent and substantial change in the circumstances and conditions of the parties has occurred since the date of the original decree and such change makes modification of the decree appear to be in the best interest of the child's welfare. *Adams v. Adams*, 93 Idaho 113, 456 P.2d 757 (1969).

Where there was no evidence to support the trial court's modification of the custody provision of the divorce decree other than the desire of the plaintiff and the fifteen-year-old daughter that custody be transferred, and where the record and pleadings showed no material, permanent or substantial change in the conditions and circumstances of either party, such change in custody was an abuse of the discretion of the trial court. *Strain v. Strain*, 95 Idaho 904, 523 P.2d 36 (1974).

Where a custody change has been requested, the court must look not only for changes of condition which are material, permanent and substantial, but also must thoroughly explore the ramifications, vis-a-vis the best interests of the child, of any change that is evident. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

Where court found, following default divorce decree against father, that the two older children of five minor children in the custody of the mother were absent from school for a substantial amount of time despite conferences between school officials and mother, that the children did not make normal advancement with classmates and that father had remarried and was able to provide children with suitable home environment to foster improved educational achievement, this record indicated that material, permanent and substantial change of circumstances had occurred since default divorce decree and that the best interests of children would be served by awarding permanent custody to father. *Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).

Where mother represented that third party had facilitated a negotiated child custody settlement and asked magistrate to enter order resolving the custody issue based on third party's recommendations and testimony and order was entered without objection, mother

was foreclosed from attacking the sufficiency of the evidence supporting that order; custody modification affirmed. *Ratliff v. Ratliff*, 129 Idaho 422, 925 P.2d 1121 (1996).

Acts and conduct of the custodial parent, resulting in the alienation of the love and affection which children naturally have for the other parent, is a vital and very serious detriment to the welfare of such children and is grounds for modification of the decree with respect to such custody. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

### —Temporary Custody.

The district court may, under this section and I.R.C.P. 65(g), enter an ex parte order granting temporary custody to a noncustodial parent if the record before him indicates that such an order is necessary and is in the best interests of the children, and if the order is followed within ten days by a full hearing on the merits of the noncustodial parent's motion. *Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).

If adequate justification for an ex parte order temporarily transferring custody to a noncustodial parent is shown, and if a full hearing on the question of which parent should maintain custody pending a motion to modify a custody decree is provided within ten days, no due process violation appears. *Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).

The district court did not abuse its discretion by issuing an ex parte order awarding temporary custody of children to the natural father for a period not exceeding ten days pursuant to the plenary authority to this section since the possibility existed that the mother would remove the couple's children from the state and since the order merely shifted custody until a full hearing would be held. *Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).

### —Tender Years Doctrine.

Where the magistrate did not determine that all other considerations were equal with respect to determination of custody as between the two parents, there was no need to apply the "Tender Years Doctrine" favoring mother's custody of young children. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

### —Visitation Rights.

Where the custodial parent refuses to recognize the visitation right of the other, or obstructs the exercise thereof, the court is required to define such right in detail and demand and enforce such regulations as may become necessary to secure its observance. *Kirkwood v. Kirkwood*, 83 Idaho 444, 363 P.2d 1016 (1961).

In view of the fact that the children will

need the support payments decreed by the court, such payments cannot be withheld as a means of enforcing the former wife's compliance with the court's visitation order, but such right of visitation must be enforced by other remedies; therefore, an order authorizing clerk of court to withhold support payments upon protest by the former husband of former wife's violation of visitation order must be stricken. *Kirkwood v. Kirkwood*, 83 Idaho 444, 363 P.2d 1016 (1961).

There was no abuse of discretion on the part of the trial court in decreeing that the two-week period of visitation with the children during summer vacation away from the respondent's home, would have to be within the jurisdiction of the state of Idaho to serve the welfare and best interests of the children. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

Magistrate judge also did not abuse his discretion in ordering that the father's homosexual partner not reside at the home when the children were present for visitation. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

#### **Discretion of Court.**

Question as to disposition of children is, in the first instance, in the discretion of trial court, and, unless such discretion is abused, judgment will not be disturbed. *Donaldson v. Donaldson*, 31 Idaho 180, 170 P. 94; *Hay v. Hay*, 40 Idaho 159, 232 P. 895; *Roosma v. Moots*, 62 Idaho 450, 112 P.2d 1000; *Fish v. Fish*, 67 Idaho 78, 170 P.2d 802 (1946).

When the disposition of a minor child has been committed to the discretion of a trial court, unless such discretion is clearly abused, the judgment will not be disturbed, the same being true when custody is changed by modification of the decree. *Smith v. Smith*, 67 Idaho 349, 180 P.2d 853 (1947).

The care, custody and education of minor children is committed to the discretion of the trial court, and, unless there is an abuse of such discretion, the judgment of the court relative thereto will not be disturbed. *Ziegler v. Ziegler*, 107 Idaho 527, 691 P.2d 773 (Ct. App. 1984).

Under this section the disposition of the custody of minor children of divorced parents is essentially committed to the sound legal discretion of the trial court, and its judgment will not be disturbed unless such discretion is clearly abused. *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1962).

An application for modification of a decree awarding child support upon the ground of a material permanent change in the circumstances of the parties since the entry of the decree is addressed to the sound judicial discretion of the trial court. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

In a divorce action, the awarding of custody of the child, as well as modification of an existent decree, rests in the sound discretion of the trial court in the first instance, and a decree awarding custody will be upheld in the absence of an abuse of discretion. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

In a divorce action an abuse of discretion occurs when the evidence is insufficient to support a finding that the interests and welfare of the child will best be served by changing the custody of the child. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

The question as to custody of children is committed, in the first instance, to the discretion of the trial court, and unless such discretion is abused, the judgment in respect to custody will not be disturbed on appeal. *Nielsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

The trial court has a wide latitude of discretion under this section concerning the question of the custody of minor children, and its judgment will not be disturbed unless such discretion is clearly abused. *Meredith v. Meredith*, 91 Idaho 898, 434 P.2d 116 (1967).

The question of custody of minor children of parents being divorced is, in the first instance, committed to the discretion of the trial court, and its determination of that issue will not be disturbed on appeal in the absence of an abuse of that discretion. *Saviers v. Saviers*, 92 Idaho 117, 438 P.2d 268 (1963).

Supreme Court will not attempt to substitute its judgment and discretion for that of the trial court except in cases in which the record reflects a clear abuse of discretion by the trial court. *Tomlinson v. Tomlinson*, 93 Idaho 42, 454 P.2d 756 (1969).

Questions of child custody are within the discretion of the trial court, and the Supreme Court will not attempt to substitute its judgment and discretion for that of the trial court except in cases where the record reflects a clear abuse of discretion where the evidence is insufficient to support a finding that the interest and welfare of the child will be best served by changing the custody of the child. *Strain v. Strain*, 95 Idaho 904, 523 P.2d 36 (1974).

This section gives wide discretion to a judge regarding custody decisions; however, the court must avoid considering irrelevant factors. *Roeh v. Roeh*, 113 Idaho 557, 746 P.2d 1016 (Ct. App. 1987).

If the court, within its discretion, decides that the best interests of the children demands a custody arrangement different from that recommended by experts chosen by the adversarial parents, then under the terms of this section it is empowered to do so. *Milliron v. Milliron*, 116 Idaho 253, 775 P.2d 145 (Ct. App. 1989).



**In General.**

Child custody and support of minor children are incidents to the disposition of a divorce action. *Baker v. Baker*, 100 Idaho 635, 603 P.2d 590 (1979).

This provision provides a directive for the trial court to determine the best interests of the children when making a custody decision, setting forth relevant, non-exhaustive factors, to aid in making its determination. *Brownson v. Allen*, 134 Idaho 60, 995 P.2d 830 (2000).

**Jurisdiction of Court.**

Jurisdiction of care and custody of infant children is committed to district courts and judges thereof. *In re Miller*, 4 Idaho 711, 43 P. 870 (1896); *Gifford v. Gifford*, 50 Idaho 517, 297 P. 1100 (1931).

This section and § 32-704 give the district court jurisdiction to award custody of children. *Kirkpatrick v. Kirkpatrick*, 52 Idaho 27, 10 P.2d 1057 (1932).

Denial of divorce does not deprive court of power to decree custody of children or maintenance of wife. *Sauvageau v. Sauvageau*, 59 Idaho 190, 81 P.2d 731 (1938).

In determining custody of minor child and right of visitation of such child in divorce action, the district court has complete and continuing jurisdiction. *Arkoosh v. Arkoosh*, 66 Idaho 607, 164 P.2d 590 (1945).

Jurisdiction to determine all matters in any way affecting the welfare or the best interest of the child continues, in the suit in which the court first obtained jurisdiction, until the child reaches his majority. *Arkoosh v. Arkoosh*, 66 Idaho 607, 164 P.2d 590 (1945).

District courts have exclusive original jurisdiction of all actions and proceedings in divorce actions, and may make all necessary orders in such proceedings, including the custody of minor children. *Smith v. Smith*, 67 Idaho 349, 180 P.2d 853 (1947).

District courts have jurisdiction to provide for custody of children in event of separation or divorce of parents. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Under this statute a court may make a valid order for support of children after a decree is entered even though no provision for support is made in the decree. *In re Martin*, 76 Idaho 179, 279 P.2d 873 (1955).

It was proper and well calculated to protect the best interests of the children for the trial court to retain jurisdiction to review the question of custody at the end of a six-month period. *Robertson v. Robertson*, 81 Idaho 547, 347 P.2d 337 (1957).

The jurisdiction of the court continues after granting divorce for the protection of the welfare of children of divorced parents. *Stratton v. Stratton*, 87 Idaho 118, 391 P.2d 340 (1964).

The permissive rather than mandatory ter-

minology of this section indicates a recognition of juvenile or probate court jurisdiction in the area of guardianship of neglected, abandoned, and delinquent children, even though the children be of a marriage dissolved by divorce. *Spaulding v. Children's Home Finding & Aid Soc'y*, 89 Idaho 10, 402 P.2d 52 (1965).

The jurisdiction of the trial court over child custodial and visitation rights is a continuing one and should be exercised by the court in such detail and specificity of order as may be necessary to carry out the intent of the court. *Dey v. Cunningham*, 93 Idaho 684, 471 P.2d 71 (1970).

Since a district court has jurisdiction not only of the divorce proceedings, but continuing jurisdiction over questions involving the custody of minor children, it was acting within its jurisdiction when it found divorced wife in contempt for refusing divorced husband his child visitation rights, so that a writ of prohibition was improperly sought, improvidently issued, and was quashed. *Dey v. Cunningham*, 93 Idaho 684, 471 P.2d 71 (1970).

Where both parties in a child custody proceeding agree to treat the former petitions as properly filed before the court and proceed accordingly, the court is not divested of jurisdiction. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

Where the mother and father both consented to the reinstatement of their petitions to modify custody and the husband proceeded to trial, the magistrate judge had continuing jurisdiction to hear matters of child custody and could reset the petitions to modify for hearing. *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004).

**—Domicil of Child.**

Where both parents submit to the jurisdiction of a court of Idaho and litigate the question of custody of children, the court has power to determine the custody of a child domiciled in Washington. *Stephens v. Stephens*, 53 Idaho 427, 24 P.2d 52 (1933).

The jurisdiction of the courts of this state may be invoked where the welfare of children is at issue, even though their domicil in this state be temporary. *Schmitt v. Schmitt*, 83 Idaho 300, 362 P.2d 884 (1961).

Where mother, when she commenced her action in Gooding county district court for custody of the two minor children, was residing with her children in the state of Idaho, such children's custody having been previously awarded by an Alaskan district court to the father with reasonable right of visitation granted to the mother, the district court had jurisdiction to hear and determine the cause of action alleged in the complaint relating to the custody of the minor children since, if the



child is actually within the state, that state's courts may determine the child's custody although the child's legal domicile is elsewhere, the question being not one of jurisdiction but whether jurisdiction should be exercised, and if so, to what extent. *Schmitt v. Schmitt*, 83 Idaho 300, 362 P.2d 884 (1961).

#### —Modification of Decree.

Under the provisions of this section, the direction of the care, custody and education of minor children remains with the trial court, and the court may at any time modify an order relative thereto, when it appears that such action is for the best interest and welfare of such children. *Mauldin v. Mauldin*, 68 Idaho 64, 188 P.2d 323 (1948).

Retention of jurisdiction for the purpose of modifying the judgment at any time after its entry, as regards the provisions of child custody, care and education until the child attains the age of majority, is established, especially by certain provisions of this section. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

After divorce proceedings, the court retains jurisdiction over minors until they reach majority in order to modify the decree to better accommodate the welfare of such children; however, a divorce decree should not be modified unless and until a permanent material change of circumstances is alleged and proven. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

The fact that the child is a minor is not the sole criterion of a court's power or jurisdiction to modify the child maintenance obligations of the original decree; rather, the fact of dependency of the child constitutes the governing criterion to be considered in imposing the obligation and thereafter in continuing, modifying or terminating such obligation. *Embree v. Embree*, 85 Idaho 443, 380 P.2d 216 (1963).

Under this section, trial court retains jurisdiction to modify maintenance awards, if such be warranted by the facts. *Neilsen v. Nielsen*, 87 Idaho 578, 394 P.2d 625 (1964).

The district court has continuing jurisdiction to modify a decree of custody whenever changed circumstances may require, and the Supreme Court will consider this continuing jurisdiction when called upon to evaluate the district court's original custody award. *Loveland v. Loveland*, 91 Idaho 400, 422 P.2d 67 (1967); *Parks v. Parks*, 91 Idaho 420, 422 P.2d 618 (1967).

Since no rule of finality exists in the determination of the right to custody of children, a district court retains continuing jurisdiction to modify the decree of custody whenever required by changed circumstances to insure the best interests and welfare of the children. *Prescott v. Prescott*, 97 Idaho 257, 542 P.2d 1176 (1975).

A trial court has continuing jurisdiction over minor children in a divorce and, regardless of any previous agreements by the parties, a divorce decree may be modified to provide the child support if a permanent and material change in circumstances is found. *McFarlin v. Crawford*, 97 Idaho 458, 546 P.2d 855 (1976).

Where the Idaho district court was the court that filed the original divorce decree, which included a stipulation regarding custody and visitation of the children, the Idaho district court was the most appropriate forum in which to file the motion to modify the custody provisions of the original divorce decree, and the district court did not err in asserting jurisdiction on the basis of the court's continuing jurisdiction under this section. *Biggers v. Biggers*, 103 Idaho 550, 650 P.2d 692 (1982).

#### Motion to Relocate.

Magistrate judge's denial of a mother's motion to relocate to another county did not constitute an abuse of discretion because the mother's living arrangements, along with other factors outlined in this section, were relevant in determining the best interest of the children. *Roberts v. Roberts*, 138 Idaho 401, 64 P.3d 327 (2003).

#### Permissive Intervention.

Allowing permissive intervention in Child Protection Act (CPA) proceedings is inconsistent with the CPA and the statutes governing the termination of parental rights; therefore, I.R.C.P. 24 is inconsistent with the CPA and should not be applied in CPA actions. *Roe v. State*, 134 Idaho 760, 9 P.3d 1226 (2000).

#### Presumption Favors Natural Parent.

In custody disputes between a "nonparent" (i.e., an individual who is neither legal nor natural parent) and a natural parent, Idaho courts apply a presumption that a natural parent should have custody as opposed to other lineal or collateral relatives or interested parties. This presumption operates to preclude consideration of the best interests of the child unless the nonparent demonstrates either that the natural parent has abandoned the child, that the natural parent is unfit or that the child has been in the nonparent's custody for an appreciable period of time. *Stockwell v. Stockwell*, 116 Idaho 297, 775 P.2d 611 (1989).

#### Procedure.

No procedure is prescribed by our code for vacating or modifying a provision in a divorce decree for the custody and maintenance of minor children. But a hearing should be had and oral testimony taken, and cause should not be disposed of on motion based on affidavits. *Cornelison v. Cornelison*, 53 Idaho 266,

23 P.2d 252 (1933) (Decision prior to 1980 amendment).

#### —Burden of Proof.

The party seeking modification of a divorce decree has the burden of proof as regards change of conditions and circumstances of the parties. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

#### —Cross-complaint.

Statute does not require that question of custody of children should be raised by cross-complaint, but is properly raised by motion and affidavits. *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1924).

#### —Evidence.

The welfare of minor children of a union dissolved by divorce is of such grave importance that the court should never be satisfied in determining such matters except upon production of the best evidence possible to be procured. Affidavits are not sufficient. *Cornelison v. Cornelison*, 53 Idaho 266, 23 P.2d 252 (1933).

An order modifying a decree for the custody and maintenance of minor children based only on conflicting affidavits was reversed with direction that witnesses be called to establish the facts relied on by the litigants and such other facts as the trial judge might deem pertinent to a decision looking to the best interests of the minor children, and that findings, conclusions and order be made accordingly. *Cornelison v. Cornelison*, 53 Idaho 266, 23 P.2d 252 (1933).

Although parents may be unfit or unable to care for their own children, they may still have an interest in their welfare and the environment in which they are placed, and they have a right to be heard before the final award is made. *Brown v. Brown*, 66 Idaho 625, 165 P.2d 886 (1946).

Court erred in excluding further evidence on grounds for divorce, where evidence might indirectly affect custody of the child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

In determining the best interests of the child the court should allow and consider all evidence relevant to a child's interest, not just that evidence which has emerged since previous orders. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

Where facts affecting children's welfare and existing at the time of the divorce or order awarding custody are not called to the attention of the court, particularly in divorce cases where the issues affecting custody have not been fully tried, the court upon a proper application may consider all facts and circumstances, including those existing prior to and at the time of the judgment or decree, in making a subsequent decree of custody.

*Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

Evidence concerning use of narcotics by husband and wife prior to their separation was not too remote in time to be relevant as character evidence in a custody suit. See *Milliron v. Milliron*, 116 Idaho 253, 775 P.2d 145 (Ct. App. 1989).

#### —Findings.

In determining a child's custody, it is necessary that findings of fact and conclusions of law as to all relevant issues be made by the trial court and included in a record of appeal. *Poesy v. Bunney*, 98 Idaho 258, 561 P.2d 400 (1977).

A finding by the trial court that both parents are fit does not preclude the court from inquiring into each parent's respective capabilities and their comparative fitness. *Milliron v. Milliron*, 116 Idaho 253, 775 P.2d 145 (Ct. App. 1989).

The trial court did not abuse its discretion in applying the factors set forth in this section where it made detailed findings on the child's wishes, the adjustment to home, school, and community, the continuity and stability of the child, and the physical and mental health of all individuals involved, and where each relevant factor was discussed along with the pertinent conflicting evidence. *Brownson v. Allen*, 134 Idaho 60, 995 P.2d 830 (2000).

#### —Order Appealable.

Where, after judgment for divorce awarding custody of children to mother, father obtained an order permitting him to visit children and restraining mother or others from estranging children from him, such order was appealable, and writ of review would not lie thereto. *Porter v. Steele*, 7 Idaho 414, 63 P. 187 (1900).

#### —Request for Relief.

The request "for such other and further relief as the court deems proper" in the prayer of a husband's petition to declare back support and alimony paid in full and to enjoin the wife and her attorney from levying execution for such back support was sufficient to enable the court to modify the decree as to future payments. *Andersen v. Andersen*, 89 Idaho 551, 407 P.2d 304 (1965).

#### —Testimony of Children.

It is within the discretion of the trial judge as to whether he will personally examine minor children, involved in custody proceedings, out of the presence of their contending parents. *Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

Where judge had already talked to a ten-year-old son of both parties in the presence of the counsel, but without the presence of the parents, at a preliminary hearing, there was no error in the court's refusal to interview the



boy privately in chambers, in the face of evidence that father had tried to alienate the boy from the mother. *Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

Judge properly ruled at time of custody hearing that a 16-year-old daughter who had testified at length as a witness for her father, the defendant, and exhibited her want of affection for her mother, was old enough to testify, in response to counsel's suggestion that the judge interview her privately, especially since the judge offered to permit her return to the witness stand for further examination. *Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

### **Religious Training.**

In child custody cases the court should maintain an attitude of strict impartiality between religions and should not interfere with the religious training of a child absent compelling reasons for such action. *Compton v. Gilmore*, 98 Idaho 190, 560 P.2d 861 (1977).

Where the trial court made no affirmative showing that the parents' conflicting religious beliefs affected the general welfare of the child, the court's order to the father to refrain from providing formal religious training to the daughter was an abuse of discretion. *Compton v. Gilmore*, 98 Idaho 190, 560 P.2d 861 (1977).

The Supreme Court of Idaho rejected the contention that, in the absence of a compelling reason, the favoring of religiousness over nonreligiousness in custody proceedings is permissible. *Osteraas v. Osteraas*, 124 Idaho 350, 859 P.2d 948 (1993).

### **Removal of Child from State.**

The trial court can grant permission to the custodian of a child of divorced parents to remove the child from the state, if the child's welfare as a normal human being and future citizen requires that such permission be given. *Roosma v. Moots*, 62 Idaho 450, 112 P.2d 1000 (1941).

The evidence warranted an order granting the maternal grandmother, to whom was awarded the custody of the minor child of the divorced parents, permission to take the child out of the state of Idaho and into the state of Washington, where the grandmother had purchased a home, the environment of which was conducive to the health, happiness, and proper care and training of the child. *Roosma v. Moots*, 62 Idaho 450, 112 P.2d 1000 (1941).

As a general rule, court should retain jurisdiction until decree of custody becomes final, but if best interest of child requires removal to another state, the court may grant such permission. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Permission to take a minor child beyond the jurisdiction of the court should only be granted where the best interests and welfare

of the child clearly require it. *Larkin v. Larkin*, 85 Idaho 610, 382 P.2d 784 (1963).

Ageographical relocation of minor children, such that the custody decree cannot be followed as previously entered, constitutes a substantial change of circumstances sufficient for the party seeking modification to be granted a hearing. *Osteraas v. Osteraas*, 124 Idaho 350, 859 P.2d 948 (1993).

Trial court did not err in awarding custody of a child to the mother on the condition that the mother not leave Idaho; although the mother wanted to move to Oregon with the child, the trial court's conclusion that it was in the best interests of the child to stay in Idaho had a substantial, rational basis in the facts. *Weiland v. Ruppel*, 139 Idaho 122, 75 P.3d 176 (2003).

### **Res Judicata.**

Husband who secured modification of support amount could not thereafter assert that the court did not have jurisdiction to modify allowance. In re *Martin*, 76 Idaho 179, 279 P.2d 873 (1955).

Judgments affecting the custody, support and education of children, like other judgments, are conclusive upon the parties privies and the doctrine of res judicata is applicable thereto. However, this is not to be applied strictly in all determinations affecting the welfare of children of divorced parents. *Stewart v. Stewart*, 86 Idaho 108, 383 P.2d 617 (1963).

The doctrines of estoppel by judgment and res judicata do not apply in an action to modify a decree of divorce where the specific issue is that of child support. *Alber v. Alber*, 93 Idaho 755, 472 P.2d 321 (1970).

Where former wife was granted a judgment modifying divorce decree by awarding custody of two children to her as a result of material change in conditions, including her remarriage, which warranted transfer of custody to her, the Supreme Court was not bound by principles of res judicata and thus appropriately granted the former husband's motion to supplement the appeal record and thus took judicial notice of former wife's divorce subsequent to trial court proceedings. *England v. Phillips*, 96 Idaho 830, 537 P.2d 1019 (1975).

### **Separation Agreement.**

The trial court had jurisdiction to hear wife's actions for child support after the child reached majority and for alimony where there was clear and convincing evidence that the parties in a separation agreement intended that the agreement be integrated and not be merged into the decree of divorce, and any presumptions to the contrary were rebutted. *Spencer-Steed v. Spencer*, 115 Idaho 338, 766 P.2d 1219 (1988).

### **Third Party Custodian.**

It is clearly established under Idaho precedent, that where a child has been in the



custody of a third party for an appreciable period of time (and thereby developed a bond with that person), the custody of the child will be awarded to that party if the best interests of the child so dictate; in this circumstance, neither "a mandatory showing of abandonment nor of patent unfitness" is necessary to overcome a natural parent's right. *Stockwell*

v. *Stockwell*, 116 Idaho 297, 775 P.2d 611 (1989).

**Cited in:** *Moye v. Moye*, 102 Idaho 170, 627 P.2d 799 (1981); *Ford v. Ford*, 108 Idaho 443, 700 P.2d 65 (1985); *Doe v. Roe*, 133 Idaho 805, 992 P.2d 1205 (1999); *Rake v. Rake*, — Idaho —, 123 P.3d 716 (Ct. App. 2005).

## RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 929 et seq.

**C.J.S.** — 27C C.J.S., Divorce, § 1277 et seq.

**A.L.R.** — Award of custody of child to parent against whom divorce is decreed. 23 A.L.R.3d 6.

Right, in child custody proceedings, to cross-examine investigating officer whose report is used by court in its decision. 59 A.L.R.3d 1337.

Parent's physical disability or handicap as factor in custody award or proceedings. 3 A.L.R.4th 1044.

Initial award or denial of child custody to homosexual or lesbian parent. 6 A.L.R.4th 1297.

Desire of child as to geographical location of residence or domicile as factor in awarding

custody or terminating parental rights. 10 A.L.R.4th 827.

Religion as factor in child custody and visitation cases. 22 A.L.R.4th 971.

Right to attorneys' fees in proceeding, after absolute divorce, for modification of child custody or support order. 57 A.L.R.4th 710.

Child custody and visitation rights arising from same-sex relationship. 80 A.L.R.5th 1.

Restrictions on parent's child visitation rights based on parent's sexual conduct. 99 A.L.R.5th 475.

Divorce decree or settlement agreement as affecting divorced spouse's right to recover as named beneficiary on former spouse's individual retirement account. 99 A.L.R.5th 637.

Religion as factor in child custody cases. 124 A.L.R.5th 203.

**32-717A. Parents' access to records and information.** — Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to, medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent. However, information concerning the minor child's address shall be deleted from such records to a parent, if the custodial parent has advised the records custodian in writing to do so. [I.C., § 32-717A, as added by 1982, ch. 311, § 2, p. 776; am. 1998, ch. 151, § 1, p. 522.]

## STATUTORY NOTES

**Cross References.** — Uniform child custody jurisdiction and enforcement act, § 32-11-101 et seq.

**32-717B. Joint custody.** — (1) "Joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents. The court may award either joint physical custody or joint legal custody or both as between the parents or parties as the court determines is for the best interests of the minor child or children. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.

(2) “Joint physical custody” means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties.

Joint physical custody shall be shared by the parents in such a way to assure the child a frequent and continuing contact with both parents but does not necessarily mean the child’s time with each parent should be exactly the same in length nor does it necessarily mean the child should be alternating back and forth over certain periods of time between each parent.

The actual amount of time with each parent shall be determined by the court.

(3) “Joint legal custody” means a judicial determination that the parents or parties are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of a child or children.

(4) Except as provided in subsection (5), of this section, absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody is in the best interests of a minor child or children.

(5) There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic violence as defined in section 39-6303, Idaho Code. [I.C., § 32-717B, as added by 1982, ch. 311, § 3, p. 776; am. 1994, ch. 340, § 2, p. 1075.]

### STATUTORY NOTES

**Cross References.** — Uniform child custody jurisdiction and enforcement act, § 32-11-101 et seq.

**Compiler’s Notes.** — Section 1 of S.L. 1982, ch. 311 read: “Policy statement. It is the

policy of this state that joint custody is a mechanism to assure children of continuing and frequent care and contact with both parents provided joint custody is in the best interest of said children.”

### JUDICIAL DECISIONS

#### ANALYSIS

Modification of custody.  
Primary physical custody.

#### Modification of Custody.

The magistrate took into account the conditions that existed in 1984, which led to the “temporary” ex parte order granting physical custody of the children to father, and the conditions subsequent to that time and up to the 1987 hearing date, and properly placed the burden of proving changed circumstances on father who did not produce sufficient evidence of a change of circumstances warranting a modification of custody. *Mills v. Mills*, 120 Idaho 635, 818 P.2d 339 (Ct. App. 1991).

There was no abuse of discretion in determining that the child would live primarily with her father during the school year after determining that he would do better in foster-

ing a strong parental bond with both parents. *State v. Hart*, — Idaho —, — P.3d —, 2006 Ida. LEXIS 41 (Mar. 22, 2006).

#### Primary Physical Custody.

While “joint legal custody” and “primary physical custody” are not inconsistent, the determination to award primary physical custody to one parent instead of joint physical custody to both parents requires a statement of reasons therefor under subsection (1) of this section. *Roeh v. Roeh*, 113 Idaho 557, 746 P.2d 1016 (Ct. App. 1987).

Magistrate’s finding that the father was not a habitual perpetrator of domestic violence was supported by substantial and competent evidence as the incidents of violence initiated

by the father resulted from his mental illness, which was later controlled by medication and counseling. *King v. King*, 137 Idaho 438, 50 P.3d 453 (2002).

**Cited in:** *Harney v. Weatherby*, 116 Idaho 904, 781 P.2d 241 (Ct. App. 1989).

**32-717C. Allegations of abuse — Investigation.** — When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the department of health and welfare. A final award of custody or visitation may not be rendered until a report on that investigation is received by the court. That investigation shall be conducted by the department within thirty (30) days of the court's notice and request for investigation. [I.C., § 32-717C, as added by 1995, ch. 275, § 1, p. 923.]

**32-717D. Parenting coordinator.** — (1) Provided that a court has entered a judgment or an order establishing child custody in a case, the court may order the appointment of a parenting coordinator to perform such duties as authorized by the court, consistent with any controlling judgment or order of a court relating to the child or children of the parties, and as set forth within the order of appointment. The court shall direct the parenting coordinator to provide a status report to the court at a time and in a manner as determined by the court. Provided however, that the court shall require the parenting coordinator to provide a minimum of one (1) status report to the court at least once every six (6) months. At any time during the period of appointment, the court, on its own initiative, or upon request of the parenting coordinator or either party, may hold a status conference to review the continued appointment of the coordinator and/or the status of the case.

(2) Qualification, selection, appointment, termination of appointment, and prescribed duties and responsibilities of a parenting coordinator shall be based upon standards and criteria as adopted by the Idaho supreme court. Provided however, that standards and criteria for qualification and selection of a parenting coordinator, as adopted by the Idaho supreme court, shall not apply to a parenting coordinator selected and agreed to by the parties. In addition, as a condition of any appointment, a parenting coordinator shall:

- (a) Be neutral to the dispute and to the parties;
- (b) Be either selected pursuant to agreement of the parties or appointed by the court;
- (c) Prior to any appointment, and at their own cost, have submitted to a criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau, the federal bureau of investigation criminal history check, the national crime information center and the statewide sex offender register. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant and shall be available for review by the court considering a parenting coordinator appointment prior to an appointment; and



- (d) Agree to appointment without requiring the parties to pay a retainer for services. Provided however, that any dispute regarding payment of the fees and costs of the parenting coordinator, shall be subject to review by the court upon request of the parenting coordinator or either party.
- (3) In addition to those duties as authorized by the court pursuant to the order of appointment, the responsibilities of a parenting coordinator shall include collaborative dispute resolution in parenting. The parenting coordinator shall act to empower the parties in resuming parenting controls and decision-making, and minimize the degree of conflict between the parties for the best interests of the children.
- (4) The court shall allocate the fees and costs of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable costs, fees and disbursements of the parenting coordinator. [I.C., § 32-717D, as added by 2002, ch. 108, § 1, p. 306.]

**32-718. Vexatious or harassing modification proceedings.** — Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification proceeding is vexatious and constitutes harassment. [I.C., § 32-718, as added by 1980, ch. 378, § 10, p. 961.]

JUDICIAL DECISIONS

**Attorney's Fees.**

Trial court did not abuse its discretion by awarding attorney fees pursuant to this section to husband, where wife brought action to modify child support and custody, where no changes in circumstances had taken place and the real reason that wife sought to alter the custody arrangement was that she

thought it was her turn to be primary custodial parent and was tired of being inconvenienced in travel between her home and husband's home. *Levin v. Levin*, 122 Idaho 583, 836 P.2d 529 (1992).  
**Cited in:** *Sherry v. Sherry*, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985).

**32-719. Visitation rights of grandparents and great-grandparents.** — The district court may grant reasonable visitation rights to grandparents or great-grandparents upon a proper showing that the visitation would be in the best interests of the child. [I.C., § 32-719, as added by 1994, ch. 407, § 1, p. 1278.]

JUDICIAL DECISIONS

ANALYSIS

Standard of proof.  
Standard of review.

**Standard of Proof.**

Liberty interest, encompassing a parent's right to determine with whom his or her child could associate, was entitled to equally heightened protection in the visitation rights context. Given such a fundamental right, the clear and convincing standard of proof applied to actions brought under this section. *Leavitt v. Leavitt*, — Idaho —, 132 P.3d 421 (2006).

**Standard of Review.**

Idaho supreme court holds that visitation decisions made pursuant to this section are subject to the abuse of discretion standard of review. In reviewing an exercise of discretion, an appellate court must consider (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its dis-

cretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court

reached its decision by an exercise of reason. *Leavitt v. Leavitt*, — Idaho —, 132 P.3d 421 (2006).

## CHAPTER 8

### DIVORCES FOR INSANITY

#### SECTION.

- 32-801. Insanity a ground for divorce.  
 32-802. Appointment of guardian — Service of process.  
 32-803. Prosecuting attorney to defend action.

#### SECTION.

- 32-804. Maintenance — Distribution of property — Custody of children.  
 32-805. Costs and expenses to be paid by plaintiff.

**32-801. Insanity a ground for divorce.** — A divorce may be granted for the cause of permanent insanity of the spouse: provided, that no divorce shall be granted under the provisions of this chapter unless such insane person shall have been duly and regularly confined in an insane asylum of this state, or of a sister state or territory, or foreign country for at least three (3) years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is permanent and incurable. [1895, p. 11, § 1; reen. 1899, p. 232, § 1; am. 1903, p. 232, § 1; am. R.C. & C.L., § 4624; C.S. § 7037; I.C.A., § 31-801; am. 1945, ch. 106, § 1, p. 158; am. 1949, ch. 68, § 1, p. 114; am. 1953, ch. 48, § 1, p. 65.]

### STATUTORY NOTES

**Cross References.** — Commitment of mentally ill, §§ 66-328 — 66-331, 66-354.

Other causes for divorce, § 32-603.

### JUDICIAL DECISIONS

#### Construction.

Proceeding under which insane person is incarcerated, having been given due process of law in foreign state, renders one "duly and regularly confined" within meaning of this

section. *Gorges v. Gorges*, 42 Idaho 357, 245 P. 691 (1926).

**Cited in:** *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663 (1956); *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

### RESEARCH REFERENCES

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 193 et seq.

**C.J.S.** — 27A C.J.S., Divorce, § 100.

**32-802. Appointment of guardian — Service of process.** — The district courts of the several judicial districts of this state shall have jurisdiction of actions for divorce under the provisions of this chapter; and such action shall be brought in the county of this state in which the plaintiff resides. And the court in which such action is about to be commenced shall, upon the filing by the plaintiff of a petition, duly verified, showing that a cause of action exists under this chapter, appoint some person to act as guardian of such insane person in such action, and the summons and complaint in such action shall be served upon the defendant by delivering a copy of such summons and complaint to such guardian, and by delivering a

copy thereof to the county attorney of the county in which such action is brought. [1895, p. 11, § 2; reen. 1899, p. 232, § 2; reen. R.C. & C.L., § 4625; C.S., § 7038; I.C.A., § 31-802.]

## JUDICIAL DECISIONS

### ANALYSIS

Effect of statute.

Purpose of appointment.

#### Effect of Statute.

Provisions of this section and § 32-803 were not intended to provide different method of obtaining service of process on nonresident insane person in divorce actions or to supersede general statutes relating to service of process on nonresidents, but should be construed to be additions to procedure in this class of cases. *Gorges v. Gorges*, 42 Idaho 357, 245 P. 691 (1926).

#### Purpose of Appointment.

Guardian ad litem represents person of nonresident insane defendant, not for purpose of giving court jurisdiction of subject-matter or person of defendant, on theory of constructive service, but to aid and assist in properly safeguarding interest of incompetent defendant. *Gorges v. Gorges*, 42 Idaho 357, 245 P. 691 (1926).

**32-803. Prosecuting attorney to defend action.** — It shall be the duty of the county attorney upon whom the summons and complaint in such action shall be served to appear for such defendant in such action and defend the same, and no divorce shall be granted under the provisions of this chapter except in the presence of the county attorney. [1895, p. 11, § 3; reen. 1899, p. 232, § 3; reen. R.C. & C.L., § 4626; C.S., § 7039; I.C.A., § 31-803.]

## JUDICIAL DECISIONS

#### Purpose of Statute.

Prosecuting or "county" attorney represents state primarily to the end that insane defendant may have any known defense to action,

properly interposed, and his rights jealously guarded and protected at each stage of proceeding. *Gorges v. Gorges*, 42 Idaho 357, 245 P. 691 (1926).

**32-804. Maintenance — Distribution of property — Custody of children.** — In any action brought under the provisions of this chapter the said courts and the judges thereof shall possess all the powers relative to the payment of maintenance and support, the distribution of property and the care and custody of children of the parties, that such courts now have, or may hereafter have, in other actions for divorce. [1895, p. 11, § 4; reen. 1899, p. 232, § 4; reen. R.C. & C.L., § 4627; C.S., § 7040; I.C.A., § 31-804; am. 1980, ch. 378, § 11, p. 961.]

## STATUTORY NOTES

**Cross References.** — Alimony and distribution of property generally, §§ 32-704 — 32-714.

Custody of children in divorce actions generally, § 32-717.



## JUDICIAL DECISIONS

**Modification of Decree.**

Where the decree contains no provision for an award of alimony, no modification of decree

can be made once the time for appeal has elapsed. *Perovitz v. Perovitz*, 94 Idaho 453, 490 P.2d 320 (1971).

**32-805. Costs and expenses to be paid by plaintiff.** — All the costs of the court in such action, as well as the actual expenses of the county attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff; such expenses of the county attorney and expenses and fees of the guardian shall be fixed and allowed by the court, and the court or the judge thereof may make such order as to the payment of such fees and expenses as to said court or judge may seem proper. [1895, p. 11, § 5; reen. 1899, p. 232, § 5; reen. R.C. & C.L., § 4628; C.S., § 7041; I.C.A., § 31-805.]

## CHAPTER 9

## HUSBAND AND WIFE — SEPARATE AND COMMUNITY PROPERTY

## SECTION.

- 32-901. Mutual obligations.
- 32-902. [Repealed.]
- 32-903. Separate property of husband and wife.
- 32-904. Separate property of wife — Management.
- 32-905. Separate property of wife — Marriage settlement not affected.
- 32-906. Community property — Income from separate and community property — Conveyance between spouses.
- 32-906A. Community property conveyed in a revocable trust remains community property.
- 32-907. Inventory of wife's property.
- 32-908. Effect of filing inventory.
- 32-909. Earnings of wife living separate from husband. [Unconstitutional.]
- 32-910. Liability for antenuptial debts.
- 32-911. Wife's liability for personal debts.
- 32-912. Control of community property.

## SECTION.

- 32-912A. [Repealed.]
- 32-913. Payments from employee benefit plans — Adverse claims.
- 32-914. Curtesy and dower abolished.
- 32-915. [Repealed.]
- 32-916. Property rights governed by chapter.
- 32-917. Formalities required of marriage settlements.
- 32-918. Marriage settlements — Record.
- 32-919. Marriage settlements — Effect of record.
- 32-920. Marriage settlements — Capacity of minor.
- 32-921. Definitions.
- 32-922. Formalities.
- 32-923. Content.
- 32-924. Effect of marriage — Amendment — Revocation.
- 32-925. Enforcement.
- 32-926. Enforcement — Void marriage.
- 32-927. Limitation of actions.
- 32-928. Application and construction.
- 32-929. Short title.

**32-901. Mutual obligations.** — Husband and wife contract toward each other obligations of mutual respect, fidelity and support. [R.S., § 2493; reen R.C. & C.L., § 2674; C.S., § 4654; I.C.A., § 31-901.]

## STATUTORY NOTES

**Cross References.** — Competency of husband and wife as witnesses, § 19-3002.  
Desertion and nonsupport of wife and chil-

dren, §§ 18-401 — 18-405.

Nature of marriage contract, § 32-201.  
Parents' rights over children, § 32-1007.

## JUDICIAL DECISIONS

## ANALYSIS

Constitutionality.  
 Construction.  
 Criminal conversation.  
 Divorce.  
 Duties and obligations.  
 — Husband.  
 — Wife.  
 Separate maintenance.

**Constitutionality.**

This section and §§ 32-902 — 32-904 (§ 32-902, repealed) are not unconstitutional as denying the wife freedom of contract or equal protection of law. *Craig v. Lane*, 60 Idaho 178, 89 P.2d 1008 (1939), overruled on other grounds, *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

**Construction.**

Statutes of this state with reference to contracts, powers and liabilities of married women must be construed as grants instead of restrictions of power and authority to contract. *Bank of Commerce, Ltd. v. Baldwin*, 12 Idaho 202, 85 P. 497 (1906), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Provisions of this chapter, concerning rights of married women, are in the nature of a grant, or an enlargement of the powers of wife to make contracts, as such rights existed at common law. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Criminal Conversation.**

This section and § 18-6001 were not grounds for wife's cause of action against husband for criminal conversation based on husband's adultery; the ill effects of a suit for criminal conversation outweigh any benefit it may have. *Neal v. Neal*, 125 Idaho 617, 873 P.2d 871 (1994).

**Divorce.**

Divorce is the exclusive remedy for a breach of any duty imposed by this section; therefore wife's argument that her civil tort claims were not available to recompense her for her husband's adultery was rejected. *Neal v. Neal*, 125 Idaho 617, 873 P.2d 871 (1994).

**Duties and Obligations.****—Husband.**

Fact that debt was contracted by wife and credit was extended on faith of her promise to pay does not relieve husband of the liability imposed on by him by operation of law, independent of wife's contractual liability to pay. *Edminston v. Smith*, 13 Idaho 645, 92 P. 842 (1907).

Primary duty rests on husband by reason of his marital contract and operation of law to furnish wife with the necessities of life, which includes board and lodging, and creditor who furnished wife with such necessities may maintain his action against husband, although latter never contracted debt, nor promised to pay bill. *Edminston v. Smith*, 13 Idaho 645, 92 P. 842 (1907).

Duty of husband to support wife is an obligation imposed upon him by the common law as well as by this section, but wife may, by contract, waive her right to support, and a separation agreement so providing is valid. *Beard v. Beard*, 53 Idaho 440, 24 P.2d 47 (1933).

The duty of a husband to support the wife and the minor children, the issue of the marriage, is a continuing one and has been accorded the dignity of a statutory obligation. *Linton v. Linton*, 78 Idaho 355, 303 P.2d 905 (1956).

It is the duty of husband to maintain and support his wife and family. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**—Wife.**

Where necessities are furnished to married woman on strength of her personal promise to pay therefor, debt is incurred for her use and benefit and she is liable therefor as a feme sole. *Edminston v. Smith*, 13 Idaho 645, 92 P. 842 (1907).

Conveyance of county property to county commissioner's wife is absolutely void even though she purchases with her separate funds or with community funds. *Clark v. Utah Constr. Co.*, 51 Idaho 587, 8 P.2d 454 (1932).

With defendant unable to pay for an attorney from his separate or community assets, his wife's duty of support under Idaho Code § 32-901, required that she pay, to the extent that she was financially able, for defendant's legal defense. *State v. Suiter*, 138 Idaho 662, 67 P.3d 1274 (Ct. App. 2003).

**Separate Maintenance.**

Suit for separate maintenance may be maintained by wife under this section. *Simonton v. Simonton*, 33 Idaho 255, 193 P.

386 (1920); *Walker v. Manson*, 49 Idaho 468, 289 P. 86 (1930).

Courts of equity have inherent jurisdiction to award separate maintenance for the support of the wife and minor children independent of any action for divorce and independent of any statutory provision. *Simonton v. Simonton*, 33 Idaho 255, 193 P. 386 (1920); *Sauvageau v. Sauvageau*, 59 Idaho 190, 81

P.2d 731 (1938); *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940).

**Cited in:** *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912); *Crosby v. Putnam*, 89 Idaho 45, 402 P.2d 389 (1965); *Shaw v. Bowman*, 101 Idaho 131, 609 P.2d 663 (1980); *Sheppard v. Sheppard*, 401 Idaho 1, 655 P.2d 895 (1982).

### OPINIONS OF ATTORNEY GENERAL

The intent of a proposed waiver application for a demonstration project under 42 U.S.C. § 1315 is to create a demonstration project along the lines of this state's relative responsibility law as that law is contained in § 32-

1008A; if the application were carefully drafted to incorporate that precise intent, this section and §§ 32-1002, 32-1003, 56-203A, 56-203B, 56-209b, and 66-414 would be irrelevant. OAG 85-10.

### 32-902. Head of family. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which § 2675; C.S., § 4655; I.C.A., § 31-902, was comprised R.S., § 2494; reen. R.C. & C.L., repealed by S.L. 1974, ch. 194, § 1.

**32-903. Separate property of husband and wife.** — All property of either the husband or the wife owned by him or her before marriage, and that acquired afterward by either by gift, bequest, devise or descent, or that which either he or she shall acquire with the proceeds of his or her separate property, by way of moneys or other property, shall remain his or her sole and separate property. [1867, p. 65, § 1; R.S., § 2495; am. 1903, p. 345, § 1; reen. R.C. & C.L., § 2676; C.S., § 4656; I.C.A., § 31-903; am. 1941, ch. 62, § 1, p. 123.]

#### STATUTORY NOTES

**Cross References.** — Insurance policies payable to married woman, proceeds to inure to her separate use and benefit, § 41-1830.

Wife's separate property exempt from execution for husband's debt's, § 11-204.

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 Commingled property.  
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### **Ceremonial Marriage Date.**

In a divorce action, the magistrate did not err in the characterization and division of property, because the magistrate properly characterized and divided the couple's separate property based on the ceremonial marriage date of February 23, 1997, and did not address the issue as to whether a common law marriage existed as of May 1, 1995, as neither party presented evidence regarding the existence of a common law marriage. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

### **Certificate of Title for Automobile — Effect.**

It was not the intent of the motor vehicle act that the issuance of certificate of title for an automobile to the wife would conclusively establish the title in her as separate property especially where there was no gift or other transfer by the husband to her of the automobile and it had been purchased with community funds; it became community property. *Farmers Ins. Exch. v. Wendler*, 84 Idaho 114, 368 P.2d 933 (1962).

### **Commingle Property.**

When separate and community property are commingled so that tracing is impossible, it is presumed to be community property, and the burden is on the person asserting the separate character of the property; when direct tracing is impossible, the party may employ indirect evidence in the form of an accounting. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Where the trial court traced the assets in each of the husband's bank accounts to the separate property of the husband acquired before marriage, and there was no community income from the separate property, there was no commingling of the funds and the property remained husband's separate property; the assets purchased with these funds were also his separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Where, although the record indicated that husband's deposit to money market account

came from his savings account, he failed to present particular and certain evidence which traced his deposit to his separate funds contained in the account, and husband's separate property in the money market account was mingled with wife's separate funds, the district court correctly classified the money market account as community property. *Lang v. Lang*, 109 Idaho 802, 711 P.2d 1322 (Ct. App. 1985).

### **Community Expenditure on Separate Property.**

The natural increase in value of a spouse's separate property during the marriage generally is not community property; however, when community efforts, labor, industry, or funds enhance the value of separate property, such enhancement is community property for which the community is entitled to reimbursement. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

The measure of the reimbursement for community expenditures on separate property is the increase in value of the property attributable thereto, not the amount or value of the community contribution; the party seeking such reimbursement to the community carries the burden of demonstrating that the community expenditures have enhanced the value of the separate property, and the amount of the enhancement. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

Where enhancement of the value of a separate property asset is not attributable to community effort or to rents and profits of the asset, it is separate property. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

When separate property is enhanced by community efforts, labor, industry, or funds, the community is entitled to reimbursement for such enhancement. *Suchan v. Suchan*, 106 Idaho 654, 682 P.2d 607 (1984).

When community labor or funds enhance the value of separate property, the amount of the enhancement is community property for which the community is entitled to reimbursement; the measure of reimbursement is

the increase in value of the property attributable to the community contribution, not the amount or value of the community contribution. The party seeking reimbursement to the community carries the burden of proving that the community expenditures have enhanced the value of the separate property, and the amount of the enhancement. *Sherry v. Sherry*, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985).

When a husband uses community property to improve his wife's separate estate, a gift of his community share is no longer presumed; therefore, the community should have been compensated for its payment of income taxes on the wife's share of reported partnership earnings which were her separate property, if the payments of income taxes were intended as a gift of husband's community share to the wife's separate estate. *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986), overruled on other grounds, *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

In a divorce action, the magistrate's decision to deny reimbursement to the community for alleged enhancements to the husband's separate property due to expenditures of community funds and labor was supported by substantial competent evidence, because some of the alleged improvements were made before the marriage, and the wife failed to demonstrate that the community expenditures enhanced the value of the husband's separate property and the amount of the enhancement. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

### Community Property.

Property purchased after marriage with money borrowed by wife is community property. *Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915).

Where the original contract purchaser of a ranch, who defaulted on contract subsequent to divorce which was later set aside for fraud, married the new purchaser of the ranch and cohabited with her with knowledge of the illicit status of his purported marriage and without furnishing any funds for payments on her contract of purchase, said husband acquired no interest in second ranch for which second wife had traded her interest in first ranch by such purported marriage and cohabitation and the ranch was not community property. *Cargill v. Hancock*, 92 Idaho 460, 444 P.2d 421 (1968).

Where parents transferred to their son the deed to a farm in return for an annuity contract which was of less value than the property, and where the differential was declared by the parents to be a gift to the son, the son had a separate property interest in the farm equivalent to the excess of the fair market value of the farm over that of the contract and the remainder of the farm was

the community property of the son and his wife. *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977).

Where the evidence indicated no increase in the size of cattle herd during marriage, but rather indicated that the cattle herd had diminished to practically nothing at the death of the decedent husband, the trial court properly determined that there was no community income from the herd, with the possible exception of interest accrued on moneys received from the sale, which moneys were more than exhausted by community expenses. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Where down payment on house was made by husband from his separate funds, but house was deeded to both husband and wife, and they each signed on the promissory note and deed of trust and, in case of default, the lender's first option would be to foreclose the mortgage on the house, the facts generated a strong inference that the character of the property was community and, in the absence of any relevant evidence to the contrary, the district court correctly found the house to be community property. The payments made on the community obligation from husband's separate funds were subject to reimbursement to him in the absence of a finding that such contributions were intended as a gift to the community. *Winn v. Winn*, 105 Idaho 811, 673 P.2d 411 (1983).

The mere signing by wife of the mortgage and leases on property conveyed to husband as a gift from his parents did not create a community interest in the property. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

A deed granting property to only one spouse shows the acquisition of property during marriage, and, without more, the presumption that the property is community applies; the separate character of the property can be established by tracing the source of the funds used to acquire the property to the separate property of the spouse named in the deed, or by showing that the property was acquired by gift, bequest, devise or descent. *Hall v. Hall*, 116 Idaho 483, 777 P.2d 255 (1989).

Trial court's finding that two parcels of land were community property and not husband's separate property was proper where witnesses presented contradictory testimony and husband failed to produce quitclaim deed he contended had been executed by his father to him before the marriage stating that deed was lost. *Krebs v. Krebs*, 114 Idaho 571, 759 P.2d 77 (Ct. App. 1988).

### Constitutionality.

This section is not unconstitutional as denying the wife freedom of contract or equal protection of law. *Craig v. Lane*, 60 Idaho 178,



89 P.2d 1008 (1939), overruled on other grounds, *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

### Conveyance Between Spouses.

Husband, when free from debts and liabilities, may make a gift to his wife from their community property and same will then become her separate property and will not be liable for debts subsequently contracted by him. *Bank of Orofino v. Wellman*, 26 Idaho 425, 143 P. 1169 (1914).

As against preexisting creditor, wife who takes a conveyance from her husband must show adequate consideration by clearer proof than is required in transactions between strangers. *Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915).

Gift of real property from husband to wife is not prima facie fraudulent. *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98 (1926).

Transfer of property from husband to wife is not fraudulent if he has sufficient remaining property to pay his debts. *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98 (1926).

Wife, having offered a document in an attempt to prove that its contents transmitted certain property from separate status to community property status, failed to sustain her burden of proving a transmutation, and also failed to demonstrate that the formalities required in §§ 32-917 through 32-919 had been followed. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

Property acquired by husband subsequent to the first divorce from, and prior to second marriage to, the same woman, was his sole and separate property; a gift to the woman of an undivided one-half interest in the same property, which was also made between the divorce and remarriage, became the wife's sole and separate property, which interest she later conveyed to a corporation. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

In a divorce action, the magistrate's finding that a 1998 quitclaim deed from the husband to himself and the wife did not transmute the husband's home from separate to community property was supported by substantial competent evidence, because the husband signed the quitclaim deed simply because a lender presented it to him during a loan closing, he signed it along with many other papers the lender presented to him, he had no intent to transmute his property into community property, and he alone signed the promissory note for the new loan. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

### Equitable Right in Property.

Property to which one spouse has acquired an equitable right before marriage is separate property, though such right is not perfected until after marriage. *Suchan v. Suchan*, 106 Idaho 654, 682 P.2d 607 (1984).

### Estoppel.

Wife who permits her separate property to remain in her husband's name is estopped to assert her title against his creditors. *Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915).

The rule of estoppel does not apply where wife did not know the title to the property was in husband's name. *McKeehan v. Vollmer-Clearwater Co.*, 30 Idaho 505, 166 P. 256 (1917).

Estoppel applies to married woman dealing in matters concerning which her common-law disabilities have been removed, same as to any other person. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

Where husband abandoned family except for sending small remittances at irregular intervals, and wife carried on business and treated property acquired therein as her separate property, neither husband nor wife could say, as against her creditors, that such property was not her separate property. *Sassaman v. Root*, 37 Idaho 588, 218 P. 374 (1923).

### Evidence.

Oral testimony of wife ought not to be received on question of separate property if written evidence is available (*Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915)); otherwise when written evidence is lost. *McKeehan v. Vollmer-Clearwater Co.*, 30 Idaho 505, 166 P. 256 (1917).

While wife's separate property may undergo mutations and yet retain its separate character, still the proof to trace and identify it in its changed condition must be clear and satisfactory. *Ahlstrom v. Tage*, 31 Idaho 459, 174 P. 605 (1918); *Clifford v. Lake*, 33 Idaho 77, 190 P. 714 (1920); *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1929).

### Husband's Separate Property.

Farm, machinery, and other assets owned by husband before marriage held to be separate property. *Riggers v. Riggers*, 81 Idaho 570, 347 P.2d 762 (1959).

The trial court properly held that the Fisher Farm was the separate property of the husband, it having been purchased on contract with a down payment of \$1500 more than one year before their marriage took place, subject however to the right of the wife to reimbursement for one half of the community funds applied toward payment thereof. *Fisher v. Fisher*, 86 Idaho 131, 383 P.2d 840 (1963).

Deposit of the proceeds of the sale of a business which was the separate property of the husband in a joint bank account of the husband and wife did not convert such funds into community property. *Stahl v. Stahl*, 91



Idaho 794, 430 P.2d 685 (1967).

Where the down payment on the purchase of a ranch was made by the husband from the proceeds of the sale of a ranch he had owned prior to marriage and all payments of principal and interest were made from the sale of cattle that were on the ranch at the time it was purchased, the fact that the wife signed the purchase contract with her husband was insufficient to constitute the ranch community property. *Cargill v. Hancock*, 92 Idaho 460, 444 P.2d 421 (1968).

Cattle held in business of selling and reinvesting in cattle, where original herd was husband's separate property, were "proceeds" from the sale thereof and likewise husband's separate property. *Evans v. Evans*, 92 Idaho 911, 453 P.2d 560 (1969).

Where the husband's father made gifts before and after marriage to son, the fact that he never could get along with son's wife, would indicate that gifts were to son rather than to community and became separate property of husband. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

A wife, in a divorce suit, could not obtain an interest in her husband's property in Idaho, acquired during the marriage as separate property by exchange for Wyoming property, where such marriage was entered into in a common law state, the state of Wyoming, which did not recognize concept of community property, notwithstanding the fact that subsequently the couple moved to a community property jurisdiction, the state of Idaho. *Peterson v. Peterson*, 94 Idaho 187, 484 P.2d 736 (1971).

Where husband's parents conveyed title to a tract of land to the husband through an oral gift, at a time when he was unmarried, a subsequent quitclaim deed executed to both husband and wife conveyed no title and the land was husband's separate property. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

A fifth wheel trailer acquired by husband prior to marriage was his sole and separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Farming equipment owned by the decedent husband prior to marriage, to the extent it still existed as a part of his estate, was readily identifiable as pre-nuptial assets and was his separate property. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Where community labor, industry, or effort was not shown to have produced any community interest in the bank accounts of the decedent husband and community expenses had more than consumed any community assets, the remainder of the property in the decedent's estate was separate property. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Where there was substantial evidence that

each of the parties entered the marriage relationship with separate property, that they intended to retain the separate nature of that property, that they kept separate bank accounts into which each deposited moneys, and that during the course of the marriage neither claimed any interest in the other's bank account or attempted to or did withdraw any moneys from the other's bank account and where all of the property in question, in action by widow to recover from estate, was purchased with moneys from the decedent husband's separate bank accounts, such property of the decedent's estate was his separate property by the nature of its source which was a ranch contract which was vested, obligatory, and intact before the existence of any marriage relationship. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Where husband produced evidence that the one-half interest in the farm property was obtained from his parents and that it was intended to be a gift to him only, the magistrate's finding that the one-half interest in the farm land was husband's separate property was supported by substantial and competent evidence. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

Where, according to the evidence, the contract for certain real estate was received by the husband from his father during the marriage by gift, the contract on the property was the husband's separate property at the time it was acquired. *Suchan v. Suchan*, 106 Idaho 654, 682 P.2d 607 (1984).

Where husband traced funds used to purchase household items to his checking account, and wife failed to show that the status of such property was community property, the magistrate's finding that the household items were community property was clearly erroneous and would be set aside, despite the fact that wife's name also appeared on the checking account. *Lang v. Lang*, 109 Idaho 802, 711 P.2d 1322 (Ct. App. 1985).

### **Income Following Separation.**

The earnings of the husband following separation and up to the date of divorce must be included as community property. *Desfosses v. Desfosses*, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991).

### **Income from Separate Property.**

Even though there was no dispute that the sole proprietorships owned by the husband at the time of marriage were his sole and separate property, after marriage, the net income of the proprietorships became community property. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

### **Liability for Debts.**

Where a married man (or woman) has entered into a contract for a community obliga-

tion, he has personally obligated himself under the contract, and his judgment creditor under the contract may execute upon his separate property for the satisfaction of a judgment against him. *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Where husband and wife each owned one-half interest in property as his or her sole and separate property, each was liable for one-half of the debts incurred by those properties; those debts are not community debts, but obligations on each person's separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

The principal payments on husband's farm loan were necessarily paid from the farm's net rental income, and the magistrate erred in determining that the community was not entitled to reimbursement. *Vanwassenhove v. Vanwassenhove*, 134 Idaho 198, 998 P.2d 505 (Ct. App. 2000).

In a joint Chapter 7 bankruptcy petition where the husband and wife debtors divorced prior to the closing of administration, under 11 U.S.C.S. § 726(c), the wife's separate property was liable for payment of allowed administrative claims, any allowed community claims, and for payment of any allowed claims flowing from her separate debts; however, 11 U.S.C.S. § 726(c) did not allow a distribution of the wife's separate property to holders of claims that were enforceable against only the husband's separate property. In *re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

### **Military Disability Benefits.**

While all property acquired during the marriage is presumed to be community property, military disability benefits received beyond an amount attributable to lost earning power during the marriage are the separate property of the injured spouse; therefore, the military disability benefits received by the husband subsequent to the divorce should be awarded as husband's separate property. *Griggs v. Griggs*, 107 Idaho 123, 686 P.2d 68 (1984).

### **Money Borrowed on Separate Property.**

Money borrowed on the faith and credit of separate property is separate property where the separate estate is the primary source of future repayment. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

### **Piercing the Corporate Veil.**

Idaho supreme court declined to adopt the remedy of piercing the corporate veil in context of a divorce division of community property. *Neibaur v. Neibaur*, — Idaho —, 125 P.3d 1072 (2005).

### **Personal, Physical and Intellectual Attributes.**

A spouse's knowledge, background and talents, being personal, physical or intellectual

attributes, cannot be categorized as property, either separate or community. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

Personal attributes can enhance income which, in the absence of an ante-nuptial agreement to the contrary, is community property, however, personal attributes are not property; thus, they cannot be classified as community property, nor can they be apportioned between spouses upon divorce. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

### **Presumption.**

A presumption exists that property acquired during marriage is community property and the party asserting the separate nature of such property has the burden of so proving. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

The fundamental concept of community property law is that all property acquired by either spouse during the marriage is rebuttably presumed to be community property; however, the presumption of community property may be rebutted by showing that the property was received as a gift by one of the spouses, because property acquired by gift is separate property. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

All property acquired by either spouse during the marriage is rebuttably presumed to be community property. *Suchan v. Suchan*, 106 Idaho 654, 682 P.2d 607 (1984).

Property purchased during marriage is subject to the presumption that all assets acquired during marriage are community property; the party asserting that such property is separate has a burden of overcoming this presumption by proving the separate character of the property through tracing the source of the funds used to make the acquisition. *Cummings v. Cummings*, 115 Idaho 186, 765 P.2d 697 (Ct. App. 1988).

Any assets acquired during marriage are presumed to be community property, with the burden of proof resting upon the party asserting that such assets constitute separate property. *Bowlden v. Bowlden*, 118 Idaho 84, 794 P.2d 1140 (1990).

Although there is a rebuttable presumption that property acquired during marriage is presumed community property, the husband successfully proved that the business was his separate property by tracing the funds used to acquire the business. *Worzala v. Worzala*, 134 Idaho 615, 7 P.3d 1092 (2000).

### **Proceeds From Community Property.**

The community was not entitled to reimbursement of the proceeds from the farm equipment where a portion of the proceeds was used to purchase a pickup as a graduation gift for the younger son of the parties and the remainder was used to pay community obligations. *Vanwassenhove v.*



Vanwassenhove, 134 Idaho 198, 998 P.2d 505 (Ct. App. 2000).

### **Property Acquired From Proceeds of Separate Property.**

If proceeds from sale of separate property are used to acquire other property, the acquired property also is separate in character. *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985).

### **Property Acquired Outside State.**

Where the law of the state of marital domicile at the time the parties acquired securities and bank accounts characterized such property as "separate" but recognized the right of a spouse at the time of divorce to share in the distribution of such property, the trial court in a divorce action was in error in applying this section to the securities and bank accounts which, if acquired jointly by the parties while domiciled in this state, would have been deemed community property and subject to division upon a divorce. *Berle v. Berle*, 97 Idaho 452, 546 P.2d 407 (1976).

### **Purpose of Statute.**

Constitution gave married woman no rights in addition to those she had at the time of its adoption. The purpose of the statute is for the protection of her separate property, leaving her free to deal with it as she sees fit. *Craig v. Lane*, 60 Idaho 178, 89 P.2d 1008 (1939).

### **Retirement Benefits.**

Military retirement benefits are classified as community or separate property according to whether the active service upon which the benefits are based took place prior to marriage or after marriage. Thus, in keeping with general community property principles, military retirement benefits are community property to the extent that they were earned during the marriage; conversely, military retirement benefits are separate property to the extent they were earned prior to the marriage. *Griggs v. Griggs*, 107 Idaho 123, 686 P.2d 68 (1984).

Where husband's military service took place entirely before the marriage, his entire retirement pay would be classified as separate property. *Lang v. Lang*, 109 Idaho 802, 711 P.2d 1322 (Ct. App. 1985).

In an action by a wife, six years after her divorce, for a redetermination of community property interest in husband's pension benefits, in which wife was awarded one-half of the pension benefits, valued at the time of actual retirement, that award included increases in pension benefits which accrued after the date of divorce, and hence not acquired during marriage, but during the time the husband was an unmarried person and as such, those increases constituted the separate property of the husband, and to the extent that an inter-

est in those post-divorce increases was awarded to the wife, it constituted an impermissible invasion of husband's separate property. *Shill v. Shill*, 115 Idaho 115, 765 P.2d 140 (1988).

Where husband's first eligible retirement date was six months after his divorce and his actual retirement date was four years later, the determination of, and the valuation of, the pension benefits should have occurred at the date of the decree of divorce; however, where such valuation and an award of a lump sum to the wife was not made and appeared to be impossible six years later in an action for redetermination of community interests, the court ruled that an award was necessary based upon the monthly sum which would have been received if the husband had taken retirement at his first eligibility. *Shill v. Shill*, 115 Idaho 115, 765 P.2d 140 (1988).

A qualified domestic relations order is a present separation of future retirement benefits and, under certain circumstances, may be preferable over a cash distribution because it does not place an undue financial strain on either party; but where husband was prepared to make a lump sum payment to wife the magistrate should have included a provision in the qualified domestic relations order that would have given him the option to make a lump sum payment to her within 60 days after judgment was entered representing the present value of her interest in the fixed benefit plan benefits. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

Although the "time rule" method of valuation of the community interest in pension plans could be employed, by calculating community interest in a retirement fund using a ratio of the duration of the marriage with the years of service, it has never been adopted nor held that the "time rule" is the only acceptable method. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

The evidence presented to the magistrate, which related to the value of the pension benefits, was in the form of account statements showing the contributions made during the marriage and the account balance at the time of marriage and at the time of divorce; any contributions, increases or earnings in the account which occurred prior to the marriage are separate property under this section, and that portion of the account was reflected in the account balance at the time of marriage; therefore, by subtracting the account balance at the time of marriage from the account balance at the time of divorce, the portion of the contributions and the increases in the account which were acquired during the marriage are identified and there is a rebuttable presumption that all property acquired during marriage — in this case, contributions and increases in the account —



is community property. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

Federal law which authorizes and regulates individual retirement accounts does not preempt Idaho community property law which would characterize individual retirement accounts which were purchased with community funds as community property. In re Estate of Mundell, 124 Idaho 152, 857 P.2d 631 (1993).

Retirement account and personal property were wife's separate property, where husband and wife never withdrew any funds from the retirement account, husband never contributed to account, and wife purchased personal property with money she inherited. *McCoy v. McCoy*, 125 Idaho 199, 868 P.2d 527 (Ct. App. 1994) (decision prior to 1995 amendment).

Because wife in divorce action was awarded a sum equal to her interest in the military retirement benefits of her husband to be paid in installments, she was entitled to interest accrued at the rate used to discount the retirement benefits to their present value. *Balderson v. Balderson*, 127 Idaho 48, 896 P.2d 956 (1995), cert. denied, 516 U.S. 865, 116 S. Ct. 179, 133 L. Ed. 2d 118 (1995).

#### **Sale of Separate Property to Spouse.**

A divorce decree may not compel one spouse to sell his or her separate property to the other spouse. *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985).

#### **Separate Property Business.**

Whenever one party to a marriage claims that he or she is entitled to share in the increase in value of a separate property business in which one of the parties was an employee during the marriage, the proper inquiry upon dissolution of the marriage is whether the community has been adequately compensated for its labor, and in determining adequate compensation, a three-pronged analysis is called for; first, business factors such as, inter alia, type, size and growth pattern should be considered; second, once the business factors have been considered, the question is whether the overall compensation received by the community was equivalent to the compensation that would have been necessary to secure a non-owner employee to perform the same services the community rendered; and third, if it is found that the community has been under-compensated, the community is then entitled to a judgment against the owner-spouse equivalent to the deficiency found. If, however, no deficiency is found, the community has no claim. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

#### **Vested Disability Benefits.**

Where a wife's disability benefits vested long before marriage, her separate labor was the source of the benefits, therefore, her dis-

ability benefits received during the marriage remained her separate property. *Cummings v. Cummings*, 115 Idaho 186, 765 P.2d 697 (Ct. App. 1988).

#### **Wife's Separate Property.**

Cases in which property was held to be the wife's separate property are as follows:

Mining property by gift. *Young v. First Nat'l Bank*, 4 Idaho 323, 39 P. 557 (1895).

Property purchased in name of wife to the extent of payment with the fund of her separate estate. *Northwestern & P. Hypotheek Bank v. Rauch*, 7 Idaho 152, 61 P. 516 (1900).

Property purchased with separate funds, even though husband joined in signing mortgage notes for balance. *Stewart v. Weiser Lumber Co.*, 21 Idaho 340, 121 P. 775 (1912); *Baldwin v. McFarland*, 26 Idaho 85, 141 P. 76 (1914); *Bank of Orofino v. Wellman*, 26 Idaho 425, 143 P. 1169 (1914).

Interest in a contract which had been assigned by husband to wife. *Salisbury v. Spofford*, 22 Idaho 393, 126 P. 400 (1912).

Property acquired by a married woman as separate property in another state and brought into this state. *Gooding Milling & Elevator Co. v. Lincoln County State Bank*, 22 Idaho 468, 126 P. 772 (1912).

Property purchased with proceeds of separate homestead. *Humbird Lumber Co. v. Doran*, 24 Idaho 507, 135 P. 66 (1913).

Question whether proceeds of timber cut from separate property are separate or community, undecided. *Humbird Lumber Co. v. Doran*, 24 Idaho 507, 135 P. 66 (1913).

Gift from husband from community property. *Bank of Orofino v. Wellman*, 26 Idaho 425, 143 P. 1169.

Property purchased with wife's money loaned to husband and repaid without fraud on creditors. *Wilkerson v. Aven*, 26 Idaho 559, 144 P. 1105 (1914).

Property purchased with wife's money, title taken in husband's name, without wife's knowledge and contrary to her instruction, she being illiterate. *McKeehan v. Vollmer-Clearwater Co.*, 30 Idaho 505, 166 P. 256 (1917).

Homestead entry by wife before marriage, even where proof is made subsequent to marriage. *Boggs v. Seawell*, 35 Idaho 132, 205 P. 262 (1922).

Property of wife owned by her before marriage and that acquired with proceeds of her separate property. *Sassaman v. Root*, 37 Idaho 588, 218 P. 374 (1923); *Bannock Nat'l Bank v. Automobile Accessories Co.*, 37 Idaho 787, 219 P. 200 (1923).

If deed describes property as "sole and separate property and estate" of wife, presumption in favor of community property disappears. *Bowman v. Bowman*, 72 Idaho 266, 240 P.2d 487 (1952).

Where a wife brought an action against her husband seeking damages for personal injuries arising out of a one-car accident, the wife was entitled to recover special damages as actual out of pocket expenses which were a community liability, general damages for loss of future earnings recoverable only in the fraction of one-half as the separate property of the injured spouse, and general damages for pain and suffering fully recoverable as the injured spouse's separate property. *Rogers v. Yellowstone Park Co.*, 97 Idaho 14, 539 P.2d 566 (1975).

Where down payment for property bought by wife before marriage was borrowed and later was repaid with community funds, the property remained separate. *Pringle v. Pringle*, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985).

House remained wife's separate property, where home was bought with wife's separate property, and the language used in the post-purchase warranty deed was ambiguous, allowing wife to offer extrinsic evidence of her intent. *McCoy v. McCoy*, 125 Idaho 199, 868 P.2d 527 (Ct. App. 1994) (decision prior to 1995 amendment).

Wife's recovery from an employment discrimination lawsuit that was settled during her marriage was her separate property where the alleged discrimination occurred prior to her marriage. *In re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

#### **Workers' Compensation Benefits.**

Where property, or the right to receive property, is acquired during marriage as compensation for some right personal to one spouse alone, that property takes its character from the right violated and is the separate property of the injured spouse; accordingly, the right to workers' compensation payments received because of work-related injuries suffered by one spouse during the marriage is the separate property of that spouse and not the community property of the couple after a

divorce. *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981).

The word "acquired" should not be read over broadly to require that every award of workers' compensation be deemed community property in total simply because the injury upon which the benefits are premised occurred during marriage. *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981).

Although workers' compensation benefits are presumed to be community property when acquired during marriage, once the marriage is terminated it becomes evident that the marital community's interest in a workers' compensation award is limited, and benefits beyond an amount attributable to lost earning power during the marriage constitute the separate property of the injured spouse. *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981).

**Cited in:** *Bliss v. Bliss*, 20 Idaho 467, 119 P. 451 (1911); *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912); *Smith v. Schultz*, 23 Idaho 144, 129 P. 640 (1912); *McDonnell v. Jones*, 25 Idaho 551, 138 P. 1123 (1914); *Baldwin v. McFarland*, 26 Idaho 85, 141 P. 76 (1914); *Wilkerson v. Aven*, 26 Idaho 559, 144 P. 1105 (1914); *Labonte v. Davidson*, 31 Idaho 644, 175 P. 588 (1918); *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940); *In re Reichert*, 95 Idaho 647, 516 P.2d 704 (1973); *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974); *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976); *Guy v. Guy*, 98 Idaho 205, 560 P.2d 876 (1977); *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979); *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985); *Keeven v. Wakley*, 110 Idaho 452, 716 P.2d 1224 (1986); *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987); *Stevens v. Stevens*, 135 Idaho 224, 16 P.3d 900 (2000); *Batra v. Batra*, 135 Idaho 388, 17 P.3d 889 (Ct. App. 2001); *Reed v. Reed*, 137 Idaho 53, 44 P.3d 1108 (2002); *Action Collection Serv. v. Seele*, 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003); *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005).

#### **RESEARCH REFERENCES**

**Am. Jur.** — 24 Am. Jur. 2d, Divorce and Separation, § 477 et seq.

**C.J.S.** — 27B C.J.S., Divorce, § 839 et seq.

**A.L.R.** — Spouse's professional degree or

license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

**32-904. Separate property of wife — Management.** — During the continuance of the marriage, the wife has the management, control and absolute power of disposition of her separate property, and may bargain, sell and convey her real and personal property, and may enter into any contract with reference to the same, in the same manner, and to the same extent, and with like effect, as a married man may in relation to his real and personal property: provided, that the husband shall be bound by such contracts to no



greater extent or effect than his wife under similar circumstances would be bound by his contracts. [1903, p. 345, § 2; reen. R.C. & C.L., § 2677; C.S., § 4657; I.C.A., § 31-904.]

### STATUTORY NOTES

**Cross References.** — Capacity of married women to sue and be sued, § 5-304.

Liability for personal debts, § 32-911.

Married women's separate property, instruments relating to, to be recorded by county recorder, § 31-2402; index, § 31-2404.

**Compiler's Notes.** — Most of the cases annotated under this section were decided

prior to the decision in *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976). The holdings in some of these cases, while not explicitly overruled in *Williams v. Paxton*, may be outdated or questionable in light of the court's discussion in that case and in light of current equal protection requirements.

### JUDICIAL DECISIONS

#### ANALYSIS

Appeal bond.  
 Authority to contract.  
 Constitutionality.  
 Contract with husband.  
 Conveyance by husband.  
 Estoppel.  
 Foreign contracts.  
 Improvements.  
 Joint obligations.  
 Liability for debts.  
 Mortgages.  
 Personal judgment against wife.  
 Preexisting indebtedness.  
 Purpose.  
 Right to sue.  
 Support of family.  
 Unauthorized acts of husband.

#### Appeal Bond.

An appeal bond filed by a married woman living with her husband is merely defective and not void. *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

Objection to appeal bond signed by a married woman living with her husband was waived where the appellee failed to file an objection within 20 days. *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

#### Authority to Contract.

It is not necessary for husband to join with wife in the conveyance or encumbrance of her real estate. Wife may, independently of her husband, enter into contracts with reference to her separate property. *Stewart v. Weiser Lumber Co.*, 21 Idaho 340, 121 P. 775 (1912).

Rights of married women to contract have been greatly enlarged by statute and her rights in this regard are governed by statute and not by common law. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

This section gives married woman manage-

ment control, and absolute power of disposition of her separate property and authorizes her to enter into contracts with reference to such property. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

Married woman has absolute control of her separate property and may dispose of it and contract with reference to it in same manner and to same effect as feme sole. *Boise Ass'n of Credit Men v. Glenns Ferry Meat Co.*, 48 Idaho 600, 283 P. 1038 (1930).

#### Constitutionality.

This section is not unconstitutional as denying the wife freedom of contract or equal protection of law. *Craig v. Lane*, 60 Idaho 178, 89 P.2d 1008 (1939), overruled on other grounds, *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

#### Contract with Husband.

Wife who loans proceeds of separate property to husband becomes one of his creditors, and rights as such are governed by same legal



principles as other creditors. *Wilkerson v. Aven*, 26 Idaho 559, 144 P. 1105 (1914); *Bates v. Papesch*, 30 Idaho 529, 166 P. 270 (1917).

A married woman can enter into a contract for property settlement with her husband. *Parke v. Parke*, 76 Idaho 168, 279 P.2d 631 (1955).

### **Conveyance by Husband.**

Wife has sole management and control of her separate property and husband has no right to convey or encumber same without her consent. *Blaine County Nat'l Bank v. Timmerman*, 42 Idaho 338, 245 P. 389 (1926).

### **Estoppel.**

Married woman who placed her husband in possession of her separate property and permitted him to manage it as his own was estopped from asserting ownership of property when it would result in the loss of a debt contracted by her husband. *Boise Butcher Co. v. Anixdale*, 26 Idaho 483, 144 P. 337 (1914).

Incident to power of married women to deal with others is capacity to be bound and estopped by their conduct, and enforcement of principle of estoppel is necessary for protection of those with whom they deal. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

### **Foreign Contracts.**

Contract entered into by married woman in a state where her common-law disabilities have been removed will be enforced here, even though not made for her own use or for the benefit of her separate estate. *Meier & Frank Co. v. Bruce*, 30 Idaho 732, 168 P. 5 (1917), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

### **Improvements.**

Married woman may contract for improvements upon her separate property. *Bassett v. Beam*, 4 Idaho 106, 36 P. 501 (1894).

### **Joint Obligations.**

It is error to render judgment jointly against husband and wife on a note signed by both, in absence of a showing that debt was created for the separate use and benefit of wife, or for the use and benefit of her separate estate. *Jaeckel v. Pease*, 6 Idaho 131, 53 P. 399 (1898). But see *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Where wife joins her husband in warranty deed conveying his separate property, and for conveyance of which husband receives the consideration, wife is not liable in any action for breach of covenant of warranty, for reason that such contract and covenant of warranty is not made with reference to wife's separate property or for her own use or benefit. *Humbird Lumber Co. v. Doran*, 24 Idaho 507,

135 P. 66 (1913). But see *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Where husband and wife both signed a contract for the purchase of community property, it was proper for the judgment creditor to proceed by execution against the wife's separate property to satisfy a joint judgment he had obtained against her and her husband. *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

### **Liability for Debts.**

Married woman may contract debts for the use and benefit of her separate property, or for her own use and benefit, and thereby charge her separate property. *Dernham v. Rowley*, 4 Idaho 753, 44 P. 643 (1896); *McFarland v. Johnson*, 22 Idaho 694, 127 P. 911 (1912).

The court concluded that defendant made the transaction to purchase 50 per cent of the cab stock in her own right, she dealing with the sellers *sui juris*, knowing her husband had no property or credit and that the community had no property or credit, therefore the obligation represented by the note was her individual and separate obligation and her separate property was liable for the payment thereof. *Frost v. Mead*, 86 Idaho 155, 383 P.2d 834 (1963), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

When a married woman has entered into a contract, whether the contract was made for her own use or benefit or for the use or benefit of her separate property, or otherwise, her judgment creditor under the contract may execute upon her separate property for the satisfaction of any judgment rendered against her. *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976), overruling, *Bank of Commerce, Ltd. v. Baldwin*, 12 Idaho 202, 85 P. 497 (1906); *Bank of Commerce, Ltd. v. Baldwin*, 14 Idaho 75, 93 P. 504 (1908); *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909); *Meier & Frank Co. v. Bruce*, 30 Idaho 732, 168 P. 5 (1917); *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921); *Ness v. Coffey*, 42 Idaho 78, 244 P. 145 (1925); *Loomis v. Gray*, 60 Idaho 193, 90 P.2d 529 (1939); *Livingston v. Parish*, 81 Idaho 473, 346 P.2d 1047 (1959); *Frost v. Mead*, 86 Idaho 155, 383 P.2d 834 (1963), to the extent they are inconsistent with this case.

### **Mortgages.**

Married woman may execute a valid accommodation mortgage on her separate property. *Vanderpool v. Bank of Hansen*, 2 F.2d 877 (D. Idaho 1924).

Mortgage of wife's separate property, signed by her, but not acknowledged, is as binding upon her separate estate as mortgage upon separate property of husband executed in like manner. *Knudsen v. Lythman*, 33 Idaho 794, 200 P. 130 (1920).

**Personal Judgment Against Wife.**

Words “assessed against community property,” appearing in personal judgment against wife, import a contradictory meaning. *Briggs v. Mason*, 44 Idaho 283, 256 P. 368 (1927).

**Preexisting Indebtedness.**

Assumption by married woman of preexisting indebtedness, as well as the indebtedness contracted in the course of the business after she became owner, were contracts in relation to her separate property. *Boise Ass'n of Credit Men v. Glenss Ferry Meat Co.*, 48 Idaho 600, 283 P. 1038 (1930).

**Purpose.**

The purpose of this section was to give married women the same contractual rights and responsibilities with respect to their separate property as those enjoyed by married men. *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Right to Sue.**

Married woman is given absolute control of her separate property, which includes right to bring an action for protection of her separate property. *Salisbury v. Spofford*, 22 Idaho 393, 126 P. 400 (1912).

**32-905. Separate property of wife — Marriage settlement not affected.** — Nothing in the two (2) preceding sections contained shall invalidate, alter or change any marriage settlement now made or to be made hereafter. [1903, p. 345, § 4; reen. R.C. & C.L., § 2678; C.S., § 4658; I.C.A., § 31-905.]

**STATUTORY NOTES**

**Cross References.** — Distribution of property upon divorce, §§ 32-712 — 32-714.

Marriage settlements, §§ 32-918 — 32-920.

**JUDICIAL DECISIONS****Statutory Formalities.**

Although a husband and wife may elect at any time to change the character of their property from separate to community and vice versa, they may do so only in the manner provided or permitted by Idaho statutes, including §§ 32-917 — 32-919, by engaging in certain formalities; consequently, in dividing property in a divorce proceeding, the magistrate acted properly when she refused to recognize an alleged oral or informal agree-

ment alleged to have transmuted a wife's separate real property into community property during the marriage where there was no evidence of compliance with any of the statutory formalities. *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982).

**Support of Family.**

No obligation rests on wife to support family out of separate property, unless there is no community property and husband is too infirm to support himself. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Unauthorized Acts of Husband.**

In order to protect her separate property from liability for the husband's unauthorized acts, the wife need not openly repudiate them. *Loomis v. Gray*, 60 Idaho 193, 90 P.2d 529 (1939), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1977).

**Cited in:** *Grice v. Woodworth*, 10 Idaho 459, 80 P. 912 (1904); *Bliss v. Bliss*, 20 Idaho 467, 119 P. 451 (1911); *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912); *McDonnell v. Jones*, 25 Idaho 551, 138 P. 1123 (1914); *Bedal v. Johnson*, 37 Idaho 359, 218 P. 641 (1923); *Rogers v. Yellowstone Park Co.*, 97 Idaho 14, 539 P.2d 566 (1975); *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

**Cited in:** *Humbird Lumber Co. v. Doran*, 24 Idaho 507, 135 P. 66 (1913); *Boggs v. Seawell*, 35 Idaho 132, 205 P. 262 (1922); *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

**32-906. Community property — Income from separate and community property — Conveyance between spouses.** — (1) All other property acquired after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by

which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(2) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 32-912, Idaho Code; provided, however, that the income, including the rents, issues and profits, from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance. [I.C., § 32-906, as added by 1980, ch. 300, § 2, p. 777; am. 2003, ch. 139, § 2, p. 403.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-906, which comprised 1867, p. 65, § 2; R.S., § 2497; reen. R.C. & C.L., § 2680; C.S., § 4660; I.C.A., § 31-907; am. 1943, ch. 23, § 1, p. 51, was repealed by S.L. 1980, ch. 300, § 1.

#### JUDICIAL DECISIONS

##### ANALYSIS

Commingling of property.  
 Community expenditure on separate property.  
 Compensation for separate property business.  
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 Determination of community property.  
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 Goodwill value of business.  
 House as separate property.  
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 Income following separation.  
 Increased value of property.  
 Liability for debts.  
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 Property acquired by individual.  
 Recovery of community property subsequent to marriage settlement.  
 Repair of separate property.  
 Retirement benefits.  
 Salaries.  
 Sole proprietorship business.  
 Social security benefits.  
 Statutory formalities.  
 Trust income.  
 Valuation of marital assets.



**Commingleing of Property.**

When separate and community property are commingled so that tracing is impossible, it is presumed to be community property, and the burden is on the person asserting the separate character of the property; when direct tracing is impossible, the party may employ indirect evidence in the form of an accounting. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Where the trial court traced the assets in each of the husband's bank accounts to the separate property of husband acquired before marriage, and there was no community income from the separate property, there was no commingling of the funds and the property remained husband's separate property; the assets purchased with these funds were also his separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

**Community Expenditure on Separate Property.**

When a husband uses community property to improve his wife's separate estate, a gift of his community share is no longer presumed; therefore, the community should have been compensated for its payment of income taxes on the wife's share of reported partnership earnings which were her separate property, if the payments of income taxes were intended as a gift of husband's community share to the wife's separate estate. *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986), overruled on other grounds, *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

In a divorce action, the magistrate's decision to deny reimbursement to the community for alleged enhancements to the husband's separate property due to expenditures of community funds and labor was supported by substantial competent evidence, because some of the alleged improvements were made before the marriage, and the wife failed to demonstrate that the community expenditures enhanced the value of the husband's separate property and the amount of the enhancement. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

**Compensation for Separate Property Business.**

Whenever one party to a marriage claims that he or she is entitled to share in the increase in value of a separate property business in which one of the parties was an employee during the marriage, the proper inquiry upon dissolution of the marriage is whether the community has been adequately compensated for its labor. In determining adequate compensation, a three-pronged analysis is called for; first, business factors such as, inter alia, type, size and growth pattern should be considered; second, once the business factors have been considered, the

question is whether the overall compensation received by the community was equivalent to the compensation that would have been necessary to secure a non-owner employee to perform the same services the community rendered; and third, if it is found that the community has been under-compensated, the community is then entitled to a judgment against the owner-spouse equivalent to the deficiency found. If, however, no deficiency is found, the community has no claim. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

**Conveyance to Spouse.**

Property acquired by husband subsequent to the first divorce from, and prior to second marriage to, the same woman, was his sole and separate property; a gift to the woman of an undivided one-half interest in the same property which was also made between the divorce and remarriage became wife's sole and separate property, which interest she later conveyed to a corporation. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

Wife, having offered a document in an attempt to prove that its contents transmitted certain property from separate status to community property status, failed to sustain her burden of proving a transmutation, and also failed to demonstrate that the formalities required in §§ 32-917 through 32-919 had been followed. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

Where husband, during marriage, executed a quitclaim deed to ranch property to his wife as her separate property and in accordance with the requirements of § 55-601, husband's testimony as to lack of consideration was inadmissible and his evidence insufficient to rebut the presumption of this section; therefore, finding that property was wife's separate property was upheld. *Bliss v. Bliss*, 127 Idaho 170, 898 P.2d 1081 (1995).

**Debenture Notes.**

Where the debenture notes were obtained with both the husband's separate property and the retained earnings which were community property, the income from the notes, whether paid or accrued, was community property under this section. *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987).

**Determination of Community Property.**

Trial court's finding that two parcels of land were community property and not husband's separate property was proper where witnesses presented contradictory testimony and husband failed to produce quitclaim deed he contended had been executed by his father to him before the marriage stating that deed was lost. *Krebs v. Krebs*, 114 Idaho 571, 759 P.2d 77 (Ct. App. 1988).

Husband asserted that the parties never established the requisite "marital commu-

nity" to which benefits and detriments would accrue, demonstrated by the brevity of the marriage and the fact that it was troubled from its onset, but it is within the discretion of the trial court to determine whether there were any compelling reasons that would justify a division of the community property that is not substantially equal and the magistrate's findings and conclusion reveal that the magistrate 1) understood that the division of the community was within the magistrate's discretion, 2) acted within the outer boundaries of the discretion and consistent with the legal standards provided in § 32-712(1), and 3) reached the decision by an exercise of reason; therefore, there was no abuse of discretion in dividing the community. *Maslen v. Maslen*, 121 Idaho 85, 822 P.2d 982 (1991).

#### **Funds Borrowed on Faith of Separate Property.**

Money borrowed on the faith and credit of separate property is separate property where the separate estate is the primary source of future repayment; however, if there exists between the spouses an actual, articulated intent that the obligation be separate or community in character, that intent shall control. *Gardner v. Gardner*, 107 Idaho 660, 691 P.2d 1275 (Ct. App. 1984).

#### **Goodwill Value of Business.**

On appeal from the disposition of property following a divorce decree, where the parties did not have an interest in the truck stop until after they were married, and all their labor on behalf of the business occurred during coverture, any goodwill value of the business was community property which should have been valued and distributed upon divorce. *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

#### **House as Separate Property.**

House remained wife's separate property, where home was bought with wife's separate property, and the language used in the post-purchase warranty deed was ambiguous, allowing wife to offer extrinsic evidence of her intent. *McCoy v. McCoy*, 125 Idaho 199, 868 P.2d 527 (Ct. App. 1994) (decision prior to 1995 amendment).

#### **Income From Separate Property.**

Where income from separate rental property was consumed by community expenses, it could not be considered as generating community income. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

There was substantial competent evidence to support the magistrate's finding that husband's payment of interest on his debts did not "pay and discharge" those debts under the terms of an antenuptial agreement, and therefore husband was not required to reim-

burse the community for the \$182,329 of his separate income which he used to pay interest on his separate debts. *Weilmunster v. Weilmunster*, 124 Idaho 227, 858 P.2d 766 (Ct. App. 1993).

Where there was substantial competent evidence to support the magistrate's finding that husband's separate ranching operations sustained net operating losses during the marriage, the pasturage value of husband's separate ranches did not constitute separate income from his separate property, and therefore did not constitute community property, but was husband's separate property. *Weilmunster v. Weilmunster*, 124 Idaho 227, 858 P.2d 766 (Ct. App. 1993).

#### **Income Following Separation.**

The earnings of the husband following separation and up to the date of divorce must be included as community property. *Desfosses v. Desfosses*, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991).

Where the evidence indicated no increase in the size of cattle herd during marriage, but rather in fact indicated that the cattle herd had diminished to practically nothing at the death of the decedent husband, the trial court properly determined that there was no community income from the herd, with the possible exception of interest accrued on moneys received from the sale, which moneys were more than exhausted by community expenses. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Even though there was no dispute that the sole proprietorships owned by the husband at the time of marriage were his sole and separate property, after marriage, the net income of the proprietorships became community property. *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1236 (Ct. App. 1989).

#### **Increased Value of Property.**

The rule governing the expenditure of community funds on separate property is that the natural increase in the value of a spouse's separate property during the marriage is generally not community property; however, when community efforts, labor, industry, or funds enhance the value of separate property, such enhancement is community property for which the community is entitled to reimbursement. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

The measure of reimbursement for community expenditures on separate property is the increase in value of the property attributable thereto, not the amount or value of the community contribution. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

When community labor or funds enhance the value of separate property, the amount of the enhancement is community property for which the community is entitled to reim-



bursement; the measure of reimbursement is the increase in value of the property attributable to the community contribution, not the amount or value of the community contribution. The party seeking reimbursement to the community carries the burden of proving that the community expenditures have enhanced the value of the separate property, and the amount of the enhancement. *Sherry v. Sherry*, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985).

### **Liability for Debts.**

Where husband and wife each owned one-half interest in property as his or her sole and separate property, each was liable for one-half of the debts incurred by those properties; those debts are not community debts, but obligations on each person's separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

The principal payments on husband's farm loan were necessarily paid from the farm's net rental income, and the magistrate erred in determining that the community was not entitled to reimbursement. *Vanwassenhove v. Vanwassenhove*, 134 Idaho 198, 998 P.2d 505 (Ct. App. 2000).

In a divorce action, the wife did not rebut the presumption that the husband's \$15,000 withdrawal from his investment plan was used for the benefit of the community, because the husband testified that he withdrew the \$15,000 "to pay bills" above and beyond those he normally would have incurred which were necessitated by the divorce process and the primary reason for the withdrawal was the payment of the debts, and the wife did not rebut the testimony. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

### **Military Disability Benefits.**

While all property acquired during the marriage is presumed to be community property, military disability benefits received beyond an amount attributable to lost earning power during the marriage are the separate property of the injured spouse; therefore, the military disability benefits received by the husband subsequent to the divorce should be awarded as husband's separate property. *Griggs v. Griggs*, 107 Idaho 123, 686 P.2d 68 (1984).

### **Pain and Suffering.**

An action for pain and suffering does not survive the death of the injured party and this section does not provide that pain and suffering is community property rather than the separate property of an injured spouse. *Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990), cert. denied, 498 U.S. 1086, 111 S. Ct. 960, 112 L. Ed. 2d 1048 (1991).

### **Partnership Earnings.**

The retained earnings of the separate property partnership interest were community

property. *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987), overruling, *Brazier v. Brazier*, 111 Idaho 692, 726 P.2d 1143 (1986) to extent of conflict.

### **Personal, Physical and Intellectual Attributes.**

A spouse's knowledge, background and talents, being personal, physical or intellectual attributes, cannot be categorized as property, either separate or community. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

Personal attributes can enhance income which, in the absence of an ante-nuptial agreement to the contrary, is community property, however, personal attributes are not property; thus, they cannot be classified as community property, nor can they be apportioned between spouses upon divorce. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

### **Presumption.**

A presumption exists that property acquired during marriage is community property and the party asserting the separate nature of such property has the burden of so proving. *Eliassen v. Fitzgerald*, 105 Idaho 234, 668 P.2d 110 (1983).

Any assets acquired during marriage are presumed to be community property, with the burden of proof resting upon the party asserting that such assets constitute separate property. *Bowlden v. Bowlden*, 118 Idaho 84, 794 P.2d 1140 (1990).

### **Proceeds from Community Property.**

The community was not entitled to reimbursement of the proceeds from the farm equipment where a portion of the proceeds was used to purchase a pickup as a graduation gift for the younger son of the parties and the remainder was used to pay community obligations. *Vanwassenhove v. Vanwassenhove*, 134 Idaho 198, 998 P.2d 505 (Ct. App. 2000).

### **Property Acquired by Individual.**

Where there was no community property, no community property could possibly have been used to contribute to the purchase of husband's separate property, and consequently the wife had no right to reimbursement for funds spent on separate property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

### **Recovery of Community Property Subsequent to Marriage Settlement.**

Even though federal law preempted state code section 56-218, where a marriage settlement agreement transmuted most of husband's and wife's community property and the income from that property into separate property of the husband, the Department of Health and Welfare could recover only community property accumulated after the agree-



ment. Idaho Dep't of Health & Welfare v. Jackman, 132 Idaho 213, 970 P.2d 6 (1998).

### **Repair of Separate Property.**

When damaged separate property is repaired at the expense of the community, and the repairs are more than minor, routine maintenance, the community should be entitled to full reimbursement, especially where the separate property is nonincome producing and does not generate the funds required for those repairs. Gardner v. Gardner, 107 Idaho 660, 691 P.2d 1275 (Ct. App. 1984).

### **Retirement Benefits.**

Military retirement benefits are classified as community or separate property according to whether the active service upon which the benefits are based took place prior to marriage or after marriage. Thus, in keeping with general community property principles, military retirement benefits are community property to the extent that they were earned during the marriage; conversely, military retirement benefits are separate property to the extent they were earned prior to the marriage. Griggs v. Griggs, 107 Idaho 123, 686 P.2d 68 (1984).

A pension fund that is a form of deferred compensation is a community property asset to the extent the fund is acquired during coverture; thus, because the wife's interest in the pension was earned during the marriage, the entire value of the pension was a community asset. Sherry v. Sherry, 108 Idaho 645, 701 P.2d 265 (Ct. App. 1985).

Where husband's first eligible retirement date was six months after his divorce and his actual retirement date was four years later, the determination of, and the valuation of, the pension benefits should have occurred at the date of the decree of divorce; however, where such valuation and an award of a lump sum to the wife was not made and appeared to be impossible six years later in an action for redetermination of community interests, the court ruled that an award was necessary based upon the monthly sum which would have been received if the husband had taken retirement at his first eligibility. Shill v. Shill, 115 Idaho 115, 765 P.2d 140 (1988).

In an action by wife, six years after her divorce, for a redetermination of community property interest in husband's pension benefits, in which wife was awarded one-half of the pension benefits, valued at the time of actual retirement, that award included increases in pension benefits which accrued after the date of divorce, and hence not acquired during marriage, but during the time the husband was an unmarried person. As such, those increases constituted the separate property of the husband, and to the extent that an interest in those post-divorce increases was awarded to the wife, it constituted an imper-

missible invasion of husband's separate property. Shill v. Shill, 115 Idaho 115, 765 P.2d 140 (1988).

A qualified domestic relations order is a present separation of future retirement benefits and, under certain circumstances, may be preferable over a cash distribution because it does not place an undue financial strain on either party; but where husband was prepared to make a lump sum payment to wife the magistrate should have included a provision in the qualified domestic relations order that would have given him the option to make a lump sum payment to her within 60 days after judgment was entered representing the present value of her interest in the fixed benefit plan benefits. Maslen v. Maslen, 121 Idaho 85, 822 P.2d 982 (1991).

Although the "time rule" method of valuation of the community interest in pension plans could be employed, by calculating community interest in a retirement fund using a ratio of the duration of the marriage with the years of service, it has never been adopted nor held that the "time rule" is the only acceptable method. Maslen v. Maslen, 121 Idaho 85, 822 P.2d 982 (1991).

The evidence presented to the magistrate, which related to the value of the pension benefits, was in the form of account statements showing the contributions made during the marriage and the account balance at the time of marriage and at the time of divorce; any contributions, increases or earnings in the account which occurred prior to the marriage are separate property under § 32-903, and that portion of the account was reflected in the account balance at the time of marriage; therefore, by subtracting the account balance at the time of marriage from the account balance at the time of divorce, the portion of the contributions and the increases in the account which were acquired during the marriage are identified and there is a rebuttable presumption that all property acquired during marriage — in this case, contributions and increases in the account — is community property. Maslen v. Maslen, 121 Idaho 85, 822 P.2d 982 (1991).

Federal law which authorizes and regulates individual retirement accounts does not preempt Idaho community property law which would characterize individual retirement accounts which were purchased with community funds as community property. In re Estate of Mundell, 124 Idaho 152, 857 P.2d 631 (1993).

Because wife in divorce action was awarded a sum equal to her interest in the military retirement benefits of her husband to be paid in installments, she was entitled to interest accrued at the rate used to discount the retirement benefits to their present value. Balderson v. Balderson, 127 Idaho 48, 896

P.2d 956 (1995), cert. denied, 516 U.S. 865, 116 S. Ct. 179, 133 L. Ed. 2d 118 (1995).

#### **Salaries.**

All salaries are community property, unlike rents and profits where only net proceeds are community property. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

#### **Sole Proprietorship Business.**

Although sole proprietorship business and its assets were clearly husband's separate property prior to marriage, where husband did not maintain the integrity of separate-ness, any remaining assets were community property, even where the value of the business suffered a decline over the term of the marriage. *Wood v. Wood*, 124 Idaho 12, 855 P.2d 473 (Ct. App. 1993).

#### **Social Security Benefits.**

Congress has positively required by direct enactment that state law be preempted with regard to whether social security benefits received during marriage are community property, as treatment of social security benefits paid during marriage as community property would do major damage to clear and substantial federal interests. *Bowlden v. Bowlden*, 118 Idaho 89, 794 P.2d 1145 (Ct. App. 1989).

#### **Statutory Formalities.**

Although a husband and wife may elect at any time to change the character of their property from separate to community and vice versa, they may do so only in the manner provided or permitted by Idaho statutes, including §§ 32-917 — 32-919, by engaging in certain formalities; consequently, in dividing property in a divorce proceeding, the magistrate acted properly when she refused to recognize an alleged oral or informal transmutation of a wife's separate real property into community property during the marriage where there was no evidence of compliance with any of the statutory formalities. *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982).

#### **Trust Income.**

Where former husband acquired a noncontingent right to 30% of trust corpus immediately upon the death of his father and this right could not be augmented nor diminished by the trustee, and the only contingency was the ability of the trustee to sell the trust assets and make distributions as soon as possible, from the time of father's death, the trustee of the father's trust was under a legal obligation to render an accounting of the trust assets to the trust beneficiaries, and to distribute to former husband 30% of the trust corpus as required by the trust document; although possession was delayed until distribution, the right to 30% of the trust corpus was acquired immediately upon the death of father and while the 30% interest acquired by former husband was his separate property, pursuant to this section, the income from the date of death of father on that 30% interest, if any, would be community property and should have been accounted for and divided upon the dissolution of the marriage. *McDonald v. Paine*, 119 Idaho 725, 810 P.2d 259 (1991).

#### **Valuation of Marital Assets.**

Where date of divorce rather than date of separation was used for valuation of marital assets, all the debts and assets of both parties accumulated during the period between the separation and divorce must be considered in the final equitable disposition of all the marital assets. *Beesley v. Beesley*, 114 Idaho 536, 758 P.2d 695 (1988).

**Cited in:** *Hunt v. Hunt*, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985); *Batra v. Batra*, 135 Idaho 388, 17 P.3d 889 (Ct. App. 2001); *Action Collection Serv. v. Seele*, 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003); *In re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003); *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005); *Carter v. Carter (In re Trust of Carter)*, — Idaho —, — P.3d —, 2006 Ida. LEXIS 23 (Feb. 23, 2006).

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Abandonment.  
 Agreements between spouses.  
 Community property.  
 Decedents' estates.  
 Division on divorce.  
 Gift to spouse.  
 In general.  
 Joint bank accounts.  
 Liability for debts.  
 Liability for torts.  
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 Property acquired out of state.



Rents and profits.  
 Rights of action.  
 Rights of husband and wife.  
 Source of funds for purchase of property.  
 Transfers to third parties.  
 Workers' compensation benefits.

### **Abandonment.**

A wife who leaves her husband, whether in the wrong or not, is entitled to share in the community property up to the time of her act of abandonment. *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

### **Agreements Between Spouses.**

Where the husband and wife, domiciled in Oregon, executed a written agreement by which they undertook to convert into community property all property then owned by them or thereafter to be acquired, the wife, by virtue of such agreement, obtained a vested community interest in land located in Idaho, and, theretofore, separately owned by the husband. *Black v. Commissioner*, 114 F.2d 355 (9th Cir. 1940).

### **Community Property.**

Cases in which property was held to be community property are as follows:

Mining property acquired under laws of the United States during coverture. *Jacobson v. Bunker Hill & Sullivan Mining & Concentrating Co.*, 3 Idaho 126, 28 P. 396 (1891).

Where property did not appear in records to be separate property. *Vermont Loan & Trust Co. v. McGregor*, 5 Idaho 510, 51 P. 104 (1897).

Recovery for injury to wife for loss of earnings to community. *Giffen v. Lewiston*, 6 Idaho 231, 55 P. 545 (1898).

Preemption filing under laws of the United States when final proof and payment is made. *Kneen v. Halin*, 6 Idaho 621, 59 P. 14 (1899).

Mortgaged property on which mortgages were executed by both husband and wife, there being no allegations that it was separate estate. *Strode v. Miller*, 7 Idaho 16, 59 P. 893 (1900).

Real estate conveyed to the wife during coverture. *Stowell v. Tucker*, 7 Idaho 312, 62 P. 1033 (1900).

Property acquired by joint effort of two members of community or their individual and separate efforts. *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912).

Receipts from disposition of community property. *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912).

Property assessed to husband, sold to third party on tax deed, repurchased by wife. *Meserole v. Whitney*, 22 Idaho 543, 127 P. 553 (1912).

Personal property alleged to have been purchased with wife's money where claim was apparently in fraud of creditors. *McDonnell v.*

*Jones*, 25 Idaho 551, 128 P. 1123 (1914).

Wife's earnings while living with her husband, in absence of any agreement to the contrary or gift by husband. *Ahlstrom v. Tage*, 31 Idaho 459, 174 P. 605 (1918); *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1929).

Where defendant wife's father had transferred to her certain stocks and moneys to enable her to care for her mother, the transfer indicating that she was to act as trustee, when she dealt with these stocks as her own, leading her husband to believe that the stocks or a major portion thereof were her own property, the dividends from such stocks were community property. *Jolley v. Jolley*, 83 Idaho 433, 363 P.2d 1020 (1961).

It was not the intent of the motor vehicle act that the issuance of certificate of title to an automobile to the wife would conclusively establish the title in her as separate property especially where there was no gift or other transfer by the husband to her of the automobile and it had been purchased with community funds; it became community property. *Farmers Ins. Exch. v. Wendler*, 84 Idaho 114, 368 P.2d 933 (1962).

The income of husband during three-year separation was income that met the terms of this section and became community property regardless of its status as income from his separate property or from the community property over which he exercised the use and control during the separation; accordingly, the district court was correct in including as community property farm machinery and trucking equipment, which remained in husband's control, with their valuation fixed as of the time of the trial rather than at time of separation. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

The explicit language of this section requires that the earnings of husband after separation be included as community property since a marriage continues, despite a separation, until a decree of divorce. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

The natural increase in value of a spouse's separate property during the marriage generally is not community property; however, when community efforts, labor, industry, or funds enhance the value of separate property, such enhancement is community property for which the community is entitled to reimbursement. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

The measure of the reimbursement for com-



munity expenditures on separate property is the increase in value of the property attributable thereto, not the amount or value of the community contribution; the party seeking such reimbursement to the community carries the burden of demonstrating that the community expenditures have enhanced the value of the separate property, and the amount of the enhancement. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

Where, under the terms of his employer-financed group term disability insurance policy, the husband received benefits which were paid as partial consideration for past employment, and he was married during the last three years that he was able to work, the disability benefits were community property. *Guy v. Guy*, 98 Idaho 205, 560 P.2d 876 (1977).

Where parents gave their son the deed to a farm in return for an annuity contract which was of less value and declared that the difference in value was a gift to the son, the son had a separate property interest in the farm equivalent to that value differential and the remainder of the farm was community property of the son and his wife. *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977).

#### **Decedents' Estates.**

While sole and separate property of widow need not be included in accounting as executrix, community property of widow and deceased husband must be so included. *Blake v. Blake*, 69 Idaho 214, 205 P.2d 495 (1922).

In suit against legal but separated wife of deceased husband by other party with whom he had been living, separated wife was legal heir and other party was not de facto or common law wife and was not entitled to proceeds of estate. *In re Reichert*, 95 Idaho 647, 516 P.2d 704 (1973).

#### **Division on Divorce.**

In computing the amount of net community income available for division between the spouses in a divorce proceeding, where there were no tax returns for the first four months of marriage, it was not error for the court to compute the amount of income for the first four months by taking one third of the husband's yearly income. *Houska v. Houska*, 97 Idaho 316, 543 P.2d 869 (1975).

In computing the amount of net community income available for division between the spouses in a divorce proceeding, the court was justified in relying on income tax returns as the measure of income rather than comparing the beginning and the ending net worth of assets. *Houska v. Houska*, 97 Idaho 316, 543 P.2d 869 (1975).

In a divorce proceeding where the parties stipulated that only the income and expenses through the year 1969 need be considered by the court in computing the net community income available for division, the court did

not err in failing to consider a loss sustained by the husband in 1970. *Houska v. Houska*, 97 Idaho 316, 543 P.2d 869 (1975).

#### **Gift to Spouse.**

Husband may give to his wife his interest in any community property or in her earnings, so long as it is not done in fraud of creditors. *Gooding Milling & Elevator Co. v. Lincoln County State Bank*, 22 Idaho 468, 126 P. 772 (1912).

#### **In General.**

Property of husband and wife is divided into two classes, namely, separate property of each spouse, and community property. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Term "community property" specifically excludes separate property of husband or wife. *Briggs v. Mason*, 44 Idaho 283, 256 P. 368 (1927).

#### **Joint Bank Accounts.**

Income deposited in a joint bank account from plaintiff-husband's separate business properties was held to be community property. *Shovlain v. Shovlain*, 78 Idaho 399, 305 P.2d 737 (1956).

Where a joint bank account was commingled, regarded and treated as community funds, under such circumstances, it became community property. *Rose v. Rose*, 82 Idaho 395, 353 P.2d 1089 (1960).

#### **Liability for Debts.**

Wife cannot bind her husband nor community property for counsel fees in a divorce action. *Wyatt v. Wyatt*, 2 Idaho (Hasb.) 236, 10 P. 228 (1886).

Wife cannot, either directly or indirectly, make community property liable for her debts which are contracts for the benefit of her separate property or for her own use and benefit. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

#### **Liability for Torts.**

Defendant husband committed the battery complained of while he was actively and actually engaged in the management of the community business, the operation of a bar, and what he did in using a tear gas gun on plaintiff was intended to be for the protection of community property and in the interest of the community business; therefore under such circumstances, the community was responsible for his tort. *Hansen v. Blevins*, 84 Idaho 49, 367 P.2d 758 (1962).

#### **Pension Benefits.**

Although defendant-husband fireman could not draw his pension, under this section, until he completed 20 years of service the pension

was not earned on the last day of the twentieth year of employment, but was a form of deferred compensation attributable to the entire period in which it accumulated, and the portion of pension rights earned during marriage constituted a contingent community property interest subject to consideration and division upon divorce. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

A firefighter's interest in the pension fund attributable to fund income from sources other than employee contributions is not a gratuity but a form of deferred compensation accrued by reason of the individual's service and is also a community property asset to the extent acquired during coverture. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

Where husband, a fireman for 19 and one-half years, and wife were divorced, the trial court erred in holding the value of the couple's community property interest in the fund on the date of divorce was the cash surrender value of \$8,089.24. *Shill v. Shill*, 100 Idaho 433, 599 P.2d 1004 (1979).

### Presumptions.

All property acquired by either spouse during coverture is presumed to be community property. Presumption may be rebutted but burden of proof rests upon party who asserts it is separate property to show such fact by a preponderance of evidence. *Jacobson v. Bunker Hill & Sullivan Mining & Concentrating Co.*, 3 Idaho 126, 28 P. 396 (1891); *Vermont Loan & Trust Co. v. McGregor*, 5 Idaho 510, 51 P. 104 (1897); *Stowell v. Tucker*, 7 Idaho 312, 62 P. 1033 (1900); *Stewart v. Weiser Lumber Co.*, 21 Idaho 340, 121 P. 775 (1912); *Douglas v. Douglas*, 22 Idaho 336, 125 P. 796 (1912); *Gooding Milling & Elevator Co. v. Lincoln County State Bank*, 22 Idaho 468, 126 P. 772 (1912); *Humbird Lumber Co. v. Doran*, 24 Idaho 507, 135 P. 66 (1913); *Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915); *Clifford v. Lake*, 33 Idaho 77, 190 P. 714 (1920); *Boggs v. Seawell*, 35 Idaho 132, 205 P. 262 (1922); *Bannock Nat'l Bank v. Automobile Accessories Co.*, 37 Idaho 787, 219 P. 200 (1923); *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1955).

In absence of proof to the contrary, presumption arises in courts of this state that community property law prevails in a sister state, same as it prevails in this state. *Douglas v. Douglas*, 22 Idaho 336, 125 P. 796 (1912).

Where contract for purchase of realty named both husband and wife, and there was no recital that it was separate property of wife, some of payments being made out of husband's bank deposits, presumption was that property was community property. *Bear Lake State Bank v. Wilcox*, 48 Idaho 147, 279 P. 1090 (1929).

Note acquired by wife from husband during coverture will be presumed community property, rather than wife's separate property, unless contrary is proved. *Swager v. Peterson*, 49 Idaho 785, 291 P. 1049 (1930).

A deed from a mother to her son was, as to the son's wife, under this section, presumed to be community property and, under such circumstances, the burden was upon anyone attempting to show that it was not such. *Aker v. Aker*, 52 Idaho 713, 20 P.2d 796 (1933), cert. denied, 290 U.S. 587, 54 S. Ct. 80, 78 L. Ed. 518 (1933).

Where property was acquired approximately four years after marriage and title was taken in the names of both parties as husband and wife, there was a disputable yet prima facie presumption that the property was community property. The burden is on the one asserting against such presumption to establish the non-existence of its community character. *Rose v. Rose*, 82 Idaho 395, 353 P.2d 1089 (1960).

Any asset acquired during marriage is rebuttably presumed to be community property and the burden of proof rests with the party asserting a separate property interest. *Guy v. Guy*, 98 Idaho 205, 560 P.2d 876 (1977).

### Property Acquired Out of State.

Where deceased acquired 20 shares of stock while married in Idaho, which were subsequently increased to 21,204 shares after deceased and his wife left Idaho, and where stock was transferred to a trust established thereafter for the benefit of children of the deceased, such trust would be considered the separate property of the deceased for income tax purposes since it was impossible to trace the 20 shares into the subsequent fortune. *Chase Nat'l Bank v. Commissioner*, 225 F.2d 621 (8th Cir. 1955), cert. denied, *Thompson v. Commissioner*, 350 U.S. 965, 76 S. Ct. 434, 100 L. Ed. 838 (1956).

Property acquired out of state as separate property and brought here or transmuted into property here retains its separate character. *Douglas v. Douglas*, 22 Idaho 336, 125 P. 796 (1912); *Gooding Milling & Elevator Co. v. Lincoln County State Bank*, 22 Idaho 468, 126 P. 772 (1912).

### Rents and Profits.

"Rents" and "profits," as used in this section, mean net rents and profits, and not gross income. *Malone v. Malone*, 64 Idaho 252, 130 P.2d 674 (1942).

Wife was entitled to one-half interest in advance rent paid on husband's separate property in the absence of evidence showing rent was not net profit. *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954).

As earnings from husband's separate property business were never distributed by the corporation, they were not "income" or "rents



and profits" and retention of earnings by the business could not be considered as community funds invested in noncommunity property. *Speer v. Quinlan*, 96 Idaho 119, 525 P.2d 314 (1974).

Retained earnings of a corporation in which husband owns stock are not "rents and profits" where it does not appear that husband was using this as a method to deprive the community of earnings and where such earnings were not due to community labor. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

### **Rights of Action.**

Right to sue for damages for personal injuries to married woman is a chose in action and is community property. *Labonte v. Davidson*, 31 Idaho 644, 175 P. 588 (1918); *Muir v. Pocatello*, 36 Idaho 532, 212 P. 345 (1922).

A surviving spouse was allowed to file a motion to be substituted as plaintiff for her deceased husband's personal injury action for damages which accrued prior to the death of the husband for depletion of community assets, reduction of the ability of the community to earn income, costs and expenses chargeable against community property, and the general damages for pain and suffering. *Doggett v. Boiler Eng'g & Supply Co.*, 93 Idaho 888, 477 P.2d 511 (1970).

### **Rights of Husband and Wife.**

Husband and wife are equal partners in community estate. *Kohny v. Dunbar*, 21 Idaho 258, 121 P. 544 (1912); *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

No distinction is made between husband and wife as to degree, quantity, and nature or extent of interest each has in community property. *Ewald v. Hufton*, 31 Idaho 373, 173 P. 247 (1918); *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

Wife's interest in community property is vested interest of same nature and extent as that of her husband. *Muir v. Pocatello*, 36 Idaho 532, 212 P. 345 (1922).

In this jurisdiction, the interest of the wife in community property is a present vested interest, equal in degree, nature and extent to that of the husband. *Hansen v. Blevins*, 84 Idaho 49, 367 P.2d 758 (1962).

### **Source of Funds for Purchase of Property.**

Crucial question in determining status of real property granted to two named parties,

the second party being referred to as "his wife," is the source of funds from which it was purchased. *Rose v. Rose*, 82 Idaho 395, 353 P.2d 1089 (1960).

Property purchased with borrowed money by either spouse during existence of community is community property. *Northwestern & P. Hypotheek Bank v. Rauch*, 7 Idaho 152, 61 P. 516 (1900); *Chaney v. Gauld Co.*, 28 Idaho 76, 152 P. 468 (1915).

Property purchased in name of wife, partly with funds of her separate estate and partly with money borrowed during existence of community, is the separate estate of wife to the extent to which funds of her separate estate are used, and community property to the extent to which such borrowed money was used in its purchase. *Northwestern & P. Hypotheek Bank v. Rauch*, 7 Idaho 152, 61 P. 516 (1900).

A life insurance policy acquired with community funds, and whose premiums are paid with community funds, is a part of the community. *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956).

The fact that real property was purchased by the husband and wife with joint tenancy funds does not create a joint tenancy with right of survivorship in the realty. *Greene v. Cooke*, 96 Idaho 48, 524 P.2d 176 (1973).

### **Transfers to Third Parties.**

Where insured wife made a change of beneficiary from her husband to her daughter without the consent and knowledge of her husband, thus attempting to make a gift of the proceeds of the policy to the daughter, since premiums had been paid with community funds, the change of beneficiary was voidable insofar as it applied to husband's half interest. *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956).

### **Workers' Compensation Benefits.**

Where property, or the right to receive property, is acquired during marriage as compensation for some right personal to one spouse alone, that property takes its character from the right violated and is the separate property of the injured spouse; accordingly, the right to workers' compensation payments received because of work-related injuries suffered by one spouse during the marriage is the separate property of that spouse and not the community property of the couple after a divorce. *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981).

## **RESEARCH REFERENCES**

**Am. Jur.** — 15A Am.Jur.2d, Community Property, § 1 et seq.

24 Am. Jur. 2d, Divorce and Separation, §§ 864, 866, 871.

**C.J.S.** — 27B C.J.S., Divorce, §§ 508, 538-541.

**A.L.R.** — Change of domicile as affecting character of property previously acquired as



separate or community property. 14 A.L.R.3d 404.

Pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses. 94 A.L.R.3d 176.

Spouse's liability, after divorce, for community debt contracted by other spouse during

marriage. 20 A.L.R.4th 211.

Validity and effect of one spouse's conveyance to other spouse of interest in property held as estate by entireties. 18 A.L.R.5th 230.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

**32-906A. Community property conveyed in a revocable trust remains community property.** — Where community property, before or after the effective date [March 13, 1973] of this section, is transferred by the husband and wife to a trust, regardless of the identity of the trustee, which trust originally or as amended prior or subsequent to such transfer (a) is revocable in whole or in part during their joint lives, (b) provides that the property after transfer to the trust shall remain community property and any withdrawal therefrom shall be their community property, and (c) is subject to amendment or alteration during their joint lifetime upon their joint consent, the property so transferred to such trust, and the interests of the spouses in such trust, shall be community property during the continuance of the marriage, unless the trust otherwise expressly provides. Nothing in this section shall be deemed to affect community property which, before or after the effective date of this section, is transferred in a manner other than as described in this section or to a trust containing different provisions than those set forth in this section; nor shall this section be construed to prohibit the trustee from conveying any trust property, real or personal, in accordance with the provisions of the trust without the consent of the husband or wife unless the trust expressly required the consent of one or both spouses. [I.C., § 32-906A, as added by 1973, ch. 159, § 1, p. 304.]

**32-907. Inventory of wife's property.** — A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside. [1867, p. 65 § 3; R.S., § 2500; reen. R.C. & C.L., § 2681; C.S., § 4661; I.C.A., § 31-908.]

#### STATUTORY NOTES

**Cross References.** — Acknowledgments of conveyances by married women, § 55-708.

**32-908. Effect of filing inventory.** — The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife. [1867, p. 65, § 5; R.S., § 2501; reen. R.C. & C.L., § 2682; C.S., § 4662; I.C.A., § 31-909.]

**32-909. Earnings of wife living separate from husband. [Unconstitutional.]** — The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate

from her husband are the separate property of the wife. [R.S., § 2502; reen. R.C. & C.L., § 2683; C.S., § 4663; I.C.A., § 31-910.]

STATUTORY NOTES

**Compiler's Notes.** — This section was held unconstitutional in *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.  
Division upon divorce.

**Constitutionality.**

The unequal treatment accorded a husband and wife through the operation of this section is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation; this section creates an unconstitutional distinction in the division of marital property upon divorce and therefore is a denial of the equal protection of the laws as guaranteed in the Fourth Amendment of the Constitution of the United States. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

Since the basic concept of community property law is to recognize that all property acquired during marriage is presumably community property, the exception created by this

section to this basic principle must fall. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

**Division Upon Divorce.**

Although the voidance of this section will render both spouses' post-separation earnings community property, I.C. § 32-712 provides for the just assignment of community property upon the dissolution of the marriage, regardless of the ground for divorce; the inclusion of all post-separation earnings of both spouses as community property, therefore, neither prohibits nor requires that they be assigned to the spouse who earned them. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

**32-910. Liability for antenuptial debts.** — The separate property of the husband is not liable for the debts of the wife contracted before the marriage. [1867, p. 65, § 13; R.S., § 2503; reen. R.C. & C.L., § 2684; C.S., § 4664; I.C.A., § 31-911.]

JUDICIAL DECISIONS

**Cited in:** *In re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

**32-911. Wife's liability for personal debts.** — The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage. [1867, p. 65, § 9; R.S., § 2504; reen. R.C. & C.L., § 2685; C.S., § 4665; I.C.A., § 31-912.]

STATUTORY NOTES

**Cross References.** — Liability for debts during coverture in management of separate estate, § 32-904.

## JUDICIAL DECISIONS

## ANALYSIS

Debts of husband.  
 Debts of wife.  
 Foreign contract.  
 Joint contract.  
 Necessities.  
 Notes.

**Debts of Husband.**

In order to charge separate property of wife with liability for debt it must be alleged and proved that debt was incurred for the use or benefit of her separate property, or was contracted by her for her own use and benefit; debts contracted by husband for his own benefit or for the use of his family can not subject the separate property of wife to liability therefor. *Dernham v. Rowley*, 4 Idaho 753, 44 P. 643 (1896); *Holt v. Gridley*, 7 Idaho 416, 63 P. 188 (1900).

Wife is not personally liable for debts of her husband, and neither is her separate property. *McFarland v. Johnson*, 22 Idaho 694, 127 P. 911 (1912).

Under the law of the state of Idaho, the wife is not personally liable for the debts of her husband. In order to hold the wife responsible, it must be alleged and proved that the debt was incurred for the benefit of her separate property. *Browder v. Cook*, 59 F. Supp. 225 (D. Idaho 1944).

In a joint Chapter 7 bankruptcy petition where the husband and wife debtors divorced prior to the closing of administration, under 11 U.S.C.S. § 726(c), the wife's separate property was liable for payment of allowed administrative claims, any allowed community claims, and for payment of any allowed claims flowing from her separate debts; however, 11 U.S.C.S. § 726(c) did not allow a distribution of the wife's separate property to holders of claims that were enforceable only against the husband's separate property. In *re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

**Debts of Wife.**

Married woman may contract debts after her marriage and subject her separate property to liability therefor. *Bassett v. Beam*, 4 Idaho 106, 36 P. 501 (1894).

Separate property of wife is liable for her own debts contracted before or after marriage. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

The court concluded that defendant made the transaction to purchase 50 per cent of the cab stock in her own right, she dealing with the sellers *sui juris*, knowing her husband had no property or credit and that the community had no property or credit, therefore

the obligation represented by the note was her individual and separate obligation and her separate property was liable for the payment thereof. *Frost v. Mead*, 86 Idaho 155, 383 P.2d 834 (1963), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Foreign Contract.**

Contract entered into by married woman in state where her common-law disabilities have been removed will be enforced here. There is nothing wicked or immoral or contrary to public policy in permitting wife's separate property to become liable for payment of her husband's debts or community debts; nor is there anything in the statutes to indicate that the public policy of the state would be violated by enforcing a valid contract made by a married woman in a sister state. *Meier & Frank Co. v. Bruce*, 30 Idaho 732, 168 P. 5 (1917), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Joint Contract.**

Where husband and wife both contract to purchase a parcel of real estate, the purchase-price is as much debt of wife as of husband. *Tipton v. Ellsworth*, 18 Idaho 207, 109 P. 134 (1910).

**Necessities.**

Where necessities are furnished wife upon her special contract and on her personal responsibility to pay therefor, she can be held to pay debt, and to that end may be sued as a *feme sole*. In such case, debt is incurred for her use and benefit. *Edminston v. Smith*, 13 Idaho 645, 92 P. 842 (1907).

There is no obligation on wife to support family out of her separate property unless there is no community property and husband is too infirm to support himself. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

**Notes.**

Married woman is liable on her negotiable promissory note given in payment of an assessment on bank stock purchased by her and carried in her name. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).



Married woman is liable on her negotiable promissory note given for money expended by her for her son and for medical attendance for herself, where she subsequently renews the note after its transfer in due course to an innocent holder. *Overland Nat'l Bank v. Halveston*, 33 Idaho 489, 196 P. 217 (1921),

overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1972).

**Cited in:** *Bank of Commerce, Ltd. v. Baldwin*, 14 Idaho 75, 93 P. 504 (1908); *Hansen v. Blevins*, 84 Idaho 49, 367 P.2d 758 (1962).

**32-912. Control of community property.** — Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal. All deeds, conveyances, bills of sale, or evidences of debt heretofore made in conformity herewith are hereby validated. [1867, p. 65, § 9; 1885, p. 137, § 1; R.S., § 2505; reen. R.C., § 2686; am. 1913, ch. 105, p. 425; am. 1915, ch. 75, § 1, p. 187; compiled and reen. C.L., § 2686; C.S., § 4666; I.C.A., § 31-913; am. 1945, ch. 18, § 1, p. 26; am. 1974, ch. 194, § 2, p. 1502; am. 1991, ch. 63, § 1, p. 156.]

### STATUTORY NOTES

**Cross References.** — Assignment of community property on dissolution of marriage, § 32-712.

Conveyances between spouses permitted, § 32-906.

**Compiler's Notes.** — Most of the cases annotated under this section were decided prior to the 1974 amendment to this section

and some of the holdings may be questionable or outdated in light of such amendment and current equal protection law since they presume all control of community property to be vested in the husband. Where a holding appears particularly questionable, the words "(decision prior to 1974 amendment)" have been added to the case citation.

### JUDICIAL DECISIONS

#### ANALYSIS

Actions.  
Agency of spouse.  
Annuity contract.  
Bankruptcy.  
Community expenditure on separate property.  
Control pending divorce.  
Dissenting shareholders' rights.  
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In general.  
Joint execution and acknowledgment.  
—Acquisition of property.  
—Brokerage agreements.  
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- Manner of acknowledgment.
- Mortgages.
- Sale of leased land.
- Sale of timber.
- Soil bank contracts.
- Supplemental contracts.
- Liability.
  - After divorce.
  - Separate debts.
  - Torts.
- Mutual mistake.
- Power to encumber community property.
- Purpose.
- Rights of spouses.
- Valid acknowledgment.
- Valid community obligations.
- Waiver of protective requirements.
- Wife's earnings.

### Actions.

Husband is the only necessary party in suit to recover damages for personal injuries to wife and for expenses incurred for medical attendance and hospital fees, and need not join wife in such action. *Labonte v. Davidson*, 31 Idaho 644, 175 P. 588 (1918) (decision prior to 1974 amendment).

Where wife enters and settles upon homestead and marries before entitled to make final proof, homestead is her separate property and she may sue in protection thereof. *Boggs v. Seawell*, 35 Idaho 132, 205 P. 262 (1922).

Married woman has such interest in cause of action for injuries to her person or character that she may sue to recover damages therefor, although her husband is proper or even necessary party in order to render judgment *res adjudicata* against both members of marital community. *Muir v. Pocatello*, 36 Idaho 532, 212 P. 345 (1922).

Wife suing as administratrix of her husband may recover money belonging to community and paid out by husband, without making herself party plaintiff in her individual capacity. *McGrath v. West End Orchard & Land Co.*, 43 Idaho 255, 251 P. 623 (1926).

Husband is necessary and proper party to sue on note belonging to community. *Swager v. Peterson*, 49 Idaho 785, 291 P. 1049 (1930).

This statute makes it plain that the community can not be sued, nor can judgment be rendered against it without the husband being made a party to the suit. A judgment against the wife in her sole, separate and individual capacity, is not a lien against the community. *First Nat'l Bank v. Samuels*, 53 Idaho 780, 27 P.2d 959 (1933) (decision prior to 1974 amendment).

In a suit by the daughter of the insured to recover the proceeds of a life insurance policy against the insurance company on the ground that same had been assigned to her, but had been paid by the insurance company to the

husband of the insured as the original beneficiary, the husband should have been made a party to the proceeding on a motion by the insurance company. *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956).

A wife who was injured in an accident involving a company car operated by her husband was entitled to pursue her cause of action for negligent personal injury against the husband and to recover damages as separate property. *Rogers v. Yellowstone Park Co.*, 97 Idaho 14, 539 P.2d 566 (1975).

### Agency of Spouse.

The husband may constitute his wife as his agent, and render binding her acts within the scope of her apparent authority, and an agency need not be established by the production of a contract or other direct proof, but it may be inferred from all the facts and circumstances in evidence, including the conduct of the parties, and, usually, it is a question for the jury. *Carron v. Guido*, 54 Idaho 494, 33 P.2d 345 (1934) (decision prior to 1974 amendment).

This section usually requires two signatures with regard to transactions involving community real estate, however, an exception to this general rule exists if one spouse is authorized to act as an agent for the management and disposition of community real property, and such an agency may be created by an express power of attorney, or may be inferred from the circumstances and conduct of the parties. *Lowry v. Ireland Bank*, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

### Annuity Contract.

An annuity contract signed by a husband was a community obligation. *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977).

### Bankruptcy.

In a joint Chapter 7 bankruptcy petition where the husband and wife debtors divorced

prior to the closing of administration, under 11 U.S.C.S. § 726(c), the wife's separate property was liable for payment of allowed administrative claims, any allowed community claims, and for payment of any allowed claims flowing from her separate debts; however, 11 U.S.C.S. § 726(c) did not allow a distribution of the wife's separate property to holders of claims that were enforceable only against the husband's separate property. In *re Hicks*, 300 B.R. 372 (Bankr. D. Idaho 2003).

### **Community Expenditure on Separate Property.**

Where there was no evidence to show that husband fraudulently or unfairly applied community funds toward his separate purposes, and there was evidence that wife acquiesced to the application of the funds to husband's separate obligations, the reimbursed funds did not become due until the court determined that wife was entitled to those funds. *Swanson v. Swanson*, 134 Idaho 512, 5 P.3d 973 (2000).

### **Control Pending Divorce.**

Under the statute authorizing the judge to make all necessary orders for the custody of property during the pendency of a divorce action, the district court had jurisdiction to make an order authorizing the wife suing for divorce to remain in the custody and exclusive control of, and continue the management over, community hotel property until a final termination of the case. *Benson v. District Court*, 62 P.2d 108 (1936).

### **Dissenting Shareholders' Rights.**

Either spouse is entitled to assert dissenting shareholders' rights on behalf of the other, at least so long as the corporation does not have reason to know that the nonsigning spouse objects; similarly, the representations of one spouse regarding the exercise of shareholders' rights should be binding on the other spouse. *Waters v. Double L, Inc.*, 114 Idaho 256, 755 P.2d 1294 (Ct. App. 1987), *aff'd*, 115 Idaho 705, 769 P.2d 582 (1989).

### **Estoppel.**

In action for foreclosure of mortgage, the government was not entitled to an equitable lien or mortgage upon property under doctrine of equitable estoppel, without deception or negligence on part of wife, where mortgage on community real property had been executed by husband but not by wife in exchange for a home improvement loan, through farmers home administration. *United States v. McConkey*, 430 F.2d 652 (9th Cir. 1970).

Statute is for protection of community property and defendant enjoying benefit of contract will not be heard to claim contract is void for noncompliance with statutory provisions. *Karlson v. Hanson & Karlson Sawmill*

*Co.*, 10 Idaho 361, 78 P. 1080 (1904); *Farrar v. Parrish*, 42 Idaho 451, 245 P. 934 (1926); *Quayle v. Stone*, 43 Idaho 306, 251 P. 630 (1926).

Where husband is almost continuously absent, and wife carries on business with her own funds and remittances occasionally received by him, and in such business acquires property which she mortgages, she can not say as against her creditors that such property is community property. *Sassaman v. Root*, 37 Idaho 588, 218 P. 374 (1923).

Where husband and wife sign mortgage and they or their agent cause or permit a false acknowledgment to be placed upon it, and one not a party to procuring the false certificate and without notice of its false procurement, for a fair consideration, takes instrument relying upon its verity, makers are estopped from disputing its verity. *Kansas City Life Ins. Co. v. Harroun*, 44 Idaho 643, 258 P. 929 (1927).

In order to constitute an estoppel, there must have been a false representation or concealment of a material fact, made with knowledge, actual or constructive, of the falsity thereof, and the party to whom the same was made must have been without knowledge or means of acquiring knowledge of the real facts, and the false representation must have been made with intent that it should be acted upon, and was acted upon to the prejudice of the party deceived, but estoppel does not ordinarily operate to prevent a husband and wife from repudiating conveyance not executed as required by this section. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Where plaintiff performed his part of a contract requiring conveyance to the husband and wife of an apartment building, in exchange for an equity in farm lands, the husband and wife could not rely on their failure to have their signatures to the contract acknowledged to escape liability for their failure to convey their equity in the farm lands, notwithstanding the provisions of this section. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

Where wife does not sign a bill of sale she is not estopped to deny validity of instrument where she makes no false representations although there is evidence that she knew of the alleged sale. *Fairchild v. Wiggins*, 85 Idaho 402, 380 P.2d 6 (1963).

Where conversation relating to the sale of timber on community real estate was held in the home during the dinner hour, the wife being present during portions of the conversation and hearing the discussion and being with her husband and prospective purchaser at dinner and the next day the husband signed a bill of sale which wife did not sign, there was no proof of any affirmative action



on the part of the wife, no proof of false representation or concealment of material fact, and no proof of any material improvement on the real property such as would estop the wife from denying the validity of the bill of sale. *Fairchild v. Wiggins*, 85 Idaho 402, 380 P.2d 6 (1963).

Where evidence disclosed that the wife was either actually aware of contract to convey the property or actually participated and benefitted from the contract during its duration she was properly estopped to invoke the statute. *Brown v. Burnside*, 94 Idaho 363, 487 P.2d 957 (1971).

It is clear that this section is subject to the rules of equitable estoppel. *Calvin v. Salmon River Sheep Ranch*, 104 Idaho 301, 658 P.2d 972 (1983).

Where the evidence indicated that the two wives of the defendant landowners were present at several of the negotiating sessions which culminated in an agreement with the plaintiff logging company, in which the plaintiff agreed to pay the landowners for the right to cut and sell the timber from the defendants' land, and the wives knew that the plaintiff was logging their property and that payments for their timber were received over the course of nine months, there was sufficient evidence for a reasonable jury to conclude that the wives were estopped to invoke the protections of this section, even though they had not signed the logging agreement nor actively participated in its negotiation. *Calvin v. Salmon River Sheep Ranch*, 104 Idaho 301, 658 P.2d 972 (1983).

### **Frivolous Appeal.**

Appeal was brought frivolously and without foundation where appeal presented no meaningful issue on a question of law in a dispute between the wife and son of decedent, over the ownership of a community property beekeeping business. *Mundell v. Stellmon*, 121 Idaho 413, 825 P.2d 510 (Ct. App. 1992).

### **In General.**

Inasmuch as this section but codifies an already existing common-law procedure for managing the community property, under which the express power of attorney sanctioned by this section was but one method by which the wife might be constituted her husband's agent for purposes of dealing with the community property, the doctrine of *expressio unius est exclusio alterius* does not apply. *Noble v. Glenns Ferry Bank, Ltd.*, 91 Idaho 364, 421 P.2d 444 (1966) (decision prior to 1974 amendment).

Under the community property system in this state and this section, which has established a rule of co-equal management of community assets or property, when either member of the community incurs a debt for the benefit of the community, the property held by

the marital community becomes liable for such a debt and the creditor may seek satisfaction of his unpaid debt from such property. *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 723 P.2d 893 (1986).

There is no such entity as a community debtor. To the extent a lending institution enters into a creditor-debtor relationship with either member of the marital community or with both members, it does so on a purely individual basis; thus, the lending institution may have a creditor-debtor relationship with either spouse separately or with both jointly. *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 723 P.2d 893 (1986).

This section evinces a legislative policy of protecting community real property from creditors, unless both spouses agree in writing to incur the debt. *Lowry v. Ireland Bank*, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

Sellers were not estopped from avoiding the oral contract with the buyers under § 32-912 where the seller's wife was not a party to any agreement between her husband and the buyers, and there was no contrary evidence to her testimony that the wife was unaware of and did not consent to the buyers' improvements to the property; further, the knowledge that the husband had could not be imputed to the wife by the sole fact of marriage where nothing tied the wife to any agreement the husband made. *Lovelass v. Sword*, 140 Idaho 105, 90 P.3d 330 (2004).

### **Joint Execution and Acknowledgment.**

A conveyance of community real estate in which the wife does not join by executing and acknowledging the instrument is void ab initio and unenforceable. *Reimann v. United States*, 196 F. Supp. 134 (D. Idaho 1961), *aff'd*, 315 F.2d 746 (9th Cir. 1963).

Husband can not dispose of community real estate unless wife joins with him in the conveyance, whether or not property is impressed with homestead declaration or used or occupied as home. *Wits-Keets-Poo v. Rowton*, 28 Idaho 193, 152 P. 1064 (1915).

Execution by wife is necessary to contract to convey community property. *Childs v. Reed*, 34 Idaho 450, 202 P. 685 (1921); *McKinney v. Merritt*, 35 Idaho 600, 208 P. 244 (1922); *Hart v. Turner*, 39 Idaho 50, 226 P. 282 (1924); *Elliott v. Craig*, 45 Idaho 15, 260 P. 433 (1927).

In this state, acknowledgment by wife is necessary to validity of any instrument whereby community property is sold, conveyed, or encumbered. *Childs v. Reed*, 34 Idaho 450, 202 P. 685 (1921); *McKinney v. Merritt*, 35 Idaho 600, 208 P. 244 (1922).

Element of mutuality in contract to convey community property must arise from inception of contract without reference to subsequent ability or willingness of one of the parties to perform. *Childs v. Reed*, 34 Idaho

450, 202 P. 685 (1921); *Elliott v. Craig*, 45 Idaho 15, 260 P. 433 (1927).

Husband can not encumber community real estate unless wife joins with him in executing and acknowledging instrument. *Weiser Loan & Trust Co. v. Comerford*, 41 Idaho 172, 238 P. 515 (1925).

Husband can not encumber or convey community real property without wife joining and acknowledging instrument of conveyance of encumbrance. *Blaine County Nat'l Bank v. Timmerman*, 42 Idaho 338, 245 P. 389 (1926).

A contract to convey community real property which is not signed and acknowledged by both husband and wife is void. *Thomas v. Stevens*, 69 Idaho 100, 203 P.2d 597 (1949).

A contract to convey community real property which is not signed and acknowledged by both husband and wife is unenforceable against strangers to the community, for want of mutuality, and the requisite mutuality must exist at the inception of the contract. *Thomas v. Stevens*, 69 Idaho 100, 203 P.2d 597 (1949).

A contract to convey community property which was not signed and acknowledged by both husband and wife could not be revived and given validity by the signing and acknowledgment thereof, by the wife, nearly five years after its inception. *Thomas v. Stevens*, 69 Idaho 100, 203 P.2d 597 (1949).

It is settled law that every instrument affecting the title to real property is subject exclusively to the laws of the state within whose jurisdiction the real property is situated; therefore, in view of the Idaho rule requiring every contract affecting community property to be signed and acknowledged by both husband and wife, contract to sell community property not signed by wife was void. *Fuchs v. Lloyd*, 80 Idaho 114, 326 P.2d 381 (1958).

Instruments conveying community realty, even when signed by both husband and wife, are ineffective unless acknowledged by husband and wife. *Furness v. Park*, 98 Idaho 617, 570 P.2d 854 (1977).

The logic and policy underlying this section require that both spouses join in an oral gift of community real estate; since a married person, acting alone, cannot encumber, sell, or otherwise convey community real estate by document, the same prohibition against solitary action applies with equal force to an oral effort to achieve the same result. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

The failure of a spouse to join in any conveyance renders the conveyance void. *Keller v. Rogstad*, 112 Idaho 484, 733 P.2d 705 (1987).

Community real property can be validly encumbered only if both spouses join in executing the instrument of encumbrance. *Lowry*

*v. Ireland Bank*, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

#### —Acquisition of Property.

The husband, as manager of or agent for, the community, can purchase, with community funds, real property which is subject to liens, reservations and exceptions, but after the community once acquires title, he can not convey or encumber the community property without the wife joining with him in the execution and acknowledgment of the instrument of conveyance or incumbrance. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 201 P.2d 976 (1948).

It is unnecessary for the wife to join with her husband in the execution of an instrument by which community real property is acquired. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 201 P.2d 976 (1948).

#### —Brokerage Agreements.

A contractual agreement with a broker to find a buyer for community property need not have the approval of both husband and wife since each spouse has the authority to separately manage and control the property so long as it is not an attempt to sell, convey, or encumber the property. *C. Forsman Real Estate Co. v. Hatch*, 97 Idaho 511, 547 P.2d 1116 (1976).

#### —Challenge to Acknowledgment.

Where a married woman admits the signing of a real estate mortgage but denies an acknowledgment thereof, such instrument will not be set aside upon her own uncorroborated testimony, and the evidence to overturn such an acknowledgment as a whole must be clear and convincing, the general rule being that a notary's certificate will not be vacated upon the unsupported testimony of the party bound where such party in fact signed the instrument assailed. *First Nat'l Bank v. Commercial Union Assurance Co.*, 40 Idaho 236, 232 P. 899 (1925).

#### —Contract Severable.

Where a contract pertained to sale of merchandise at a stated price and lease of building constituting community realty as a stipulated rental, the latter portion of which was invalid for want of acknowledgment by wife of the lessor, but the contract did not prohibit the buyer from removing the merchandise from the premises, or require the buyer to carry on the business on the premises, the provisions were severable authorizing enforcement of provisions pertaining to sale. *Durant v. Snyder*, 65 Idaho 678, 151 P.2d 776 (1944).

#### —Insurance.

Where insured wife made a change of beneficiary from her husband to her daughter, without the consent and knowledge of her



husband, thus attempting to make a gift of the proceeds of the policy to the daughter, since premiums had been paid with community funds, the change of beneficiary was voidable insofar as it applied to husband's half interest. *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956).

#### —Leases.

In action by buyers of corporate stock for breach of contract wherein wife failed to sign and to acknowledge lease agreement, the court held that a lease for years was an estate in real property and, with respect to community property, lease agreement was void and unenforceable by virtue of this section. *Kays v. Brack*, 350 F. Supp. 1243 (D. Idaho 1972).

A written lease of community property for a term of years is a conveyance and encumbrance within this section and is void unless wife joins in the execution and acknowledgment thereof. *Fargo v. Bennett*, 35 Idaho 359, 206 P. 692 (1922); *Intermountain Realty Co. v. Allen*, 60 Idaho 228, 90 P.2d 704 (1939); *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939); *Hancock v. Elkington*, 67 Idaho 542, 186 P.2d 494 (1947).

While lease of community property must be jointly executed, and is void for failure in this regard, owner may recover for use and occupation of land, and void lease may be used to establish amount of rent to be paid. *Quayle v. Stone*, 43 Idaho 306, 251 P. 630 (1926).

Lease of community property not signed or acknowledged by wife was not valid where lessor had been in possession only a short time and sought to invoke harsh remedy of forfeiture, although wife had acquiesced in lease and had been ready, able, and willing to sign. *Burnham v. Henderson*, 47 Idaho 687, 278 P. 221 (1929).

A leasehold estate which belongs to the community can not be sold, encumbered or materially modified by the lessee without the written consent of his wife. *Intermountain Realty Co. v. Allen*, 60 Idaho 228, 90 P.2d 704 (1939).

A lease of community real estate for a period not exceeding one year is not such an "encumbrance" as is required by the statute to be in writing, executed and acknowledged by both husband and wife. *Abbl v. Morrison*, 64 Idaho 489, 134 P.2d 94 (1943).

A lease of community real property for more than one year, not acknowledged by husband and wife is not enforceable as such. *Durant v. Snyder*, 65 Idaho 678, 151 P.2d 776 (1944).

A lease for more than one year or a mortgage is such a conveyance or encumbrance that it falls within the prohibition that a husband acting as agent for the community can not execute same unless his wife joins with him in executing the instrument. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho

506, 201 P.2d 976 (1948).

When husband, as agent for community, contracted that realty should immediately upon acquisition be subject to a lease in favor of vendor in order to acquire such realty from vendor, such contract was not void for the reason that it was not signed by the wife. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 201 P.2d 976 (1948).

A leasehold in an estate is real property, hence contract to assign a lease signed only by husband is void, since contract to assign lease constitutes an encumbrance. *Coppedge v. Leiser*, 71 Idaho 248, 229 P.2d 977 (1951).

If contract to sell garage signed only by husband contains an agreement to transfer lease as well as for sale of inventory, and contract terms show intention of parties that premises are to be used for conduct of business, sale contract is void. *Coppedge v. Leiser*, 71 Idaho 248, 229 P.2d 977 (1951).

#### —Manner of Acknowledgment.

Where a husband and wife signed a purported lease contemplating the leasing of community property for a term of years, but neither personally appeared before the acknowledging notary public, the latter could not take their acknowledgment of the lease by accepting or acting upon an affidavit of a third party stating that the third party personally knew the husband and wife, and was present and saw them execute the lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

A husband who challenged the validity of an assignment of real property on the ground that the signatures of himself and his wife had not been acknowledged before a notary failed to sustain his burden in light of the presumption of truth favoring a signed acknowledgment which is complete and regular on its face, and, accordingly, a finding of proper acknowledgment would be upheld. *Furness v. Park*, 98 Idaho 617, 570 P.2d 854 (1977).

#### —Mortgages.

Since under this section an encumbrance of community property is void unless both the husband and wife join in the execution and their signatures are acknowledged, where wife did not join with husband in executing mortgage on community real property in exchange for a home improvement loan, through farmers home administration, the mortgage was invalid and not subject to foreclosure by the government, even though the couple had not lived together for more than ten years prior to the execution of the mortgage. *United States v. McConkey*, 430 F.2d 652 (9th Cir. 1970).

Acknowledgment of wife is necessary to mortgage of community property. *Myers v. Eby*, 33 Idaho 266, 193 P. 77 (1920); *Knudsen*



v. Lythman, 33 Idaho 794, 200 P. 130 (1920); McKinney v. Merritt, 35 Idaho 600, 208 P. 244 (1922).

Mortgage of community property not signed by wife is void. *Civils v. First Nat'l Bank*, 41 Idaho 690, 241 P. 1023 (1925).

#### —Sale of Leased Land.

Lease on community property could not be terminated by landlords, husband and wife, by notice based on an earnest money receipt and agreement signed by the husband only and accepted by the purchasers, as such did not constitute an enforceable sale within provision of the lease that the contract was subject to sale of the real estate. *West v. Brenner*, 88 Idaho 44, 396 P.2d 115 (1964).

#### —Sale of Timber.

A bill of sale for timber is an encumbrance upon community realty and is void without wife's signature and acknowledgment. *Fairchild v. Wiggins*, 85 Idaho 402, 380 P.2d 6 (1963).

#### —Soil Bank Contracts.

Husband did not "encumber" community real estate by executing soil bank contract, and, since the execution of the contract was within the husband's powers of "management and control," expressly established under this section, the wife's signature was not required. *Reimann v. United States*, 315 F.2d 746 (9th Cir. 1963) (Decision prior to 1974 amendment).

#### —Supplemental Contracts.

Supplemental contract extending time of payment called for by earlier contract did not involve sale, encumbrance, or transfer of community property, and did not require acknowledgment. *Binder v. Blair*, 48 Idaho 580, 283 P. 613 (1929).

This statute did not apply to agreement by husband alone reducing price of land sold on account of loss of buildings by fire where deeds signed by both spouses had been executed and placed in escrow. *Williamson v. Wilson*, 56 Idaho 198, 52 P.2d 138 (1935).

#### Liability.

##### —After Divorce.

A creditor may not proceed against community assets distributed to the nondebtor spouse pursuant to a divorce decree, except where the debtor spouse is responsible for a community obligation but is not awarded sufficient community assets to satisfy such a debt. *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 723 P.2d 893 (1986).

The bank was without any basis to sue the debtor's ex-wife or otherwise execute on former community property now in her possession, where the bank took a security interest in the debtor's property following the

division of community property pursuant to a divorce decree. *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 723 P.2d 893 (1986).

##### —Separate Debts.

Community property can not be bound by postnuptial contracts of wife for the use and benefit of her own separate property. *Hall v. Johns*, 17 Idaho 224, 105 P. 71 (1909), overruled on other grounds, *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976).

Community property is liable to attachment and execution for debts of husband, whether incurred for his own use or for the benefit of community; the 1913 amendment did not affect the general rule. *Holt v. Empey*, 32 Idaho 106, 178 P. 703 (1919).

Community property is liable for separate debts of husband as well as community debts. *Gustin v. Byam*, 41 Idaho 538, 240 P. 600 (1925).

Since only if a debt is incurred for the benefit of the community does this section allow satisfaction of the unpaid debt from the community property where complaint alleged neither personal liability nor that the debt was incurred for the benefit of the community and wife had not signed the note, court could not render judgment of foreclosure on mortgage securing a promissory note against wife of deceased defendant. *First Idaho Corp. v. Davis*, 867 F.2d 1241 (9th Cir. 1989).

##### —Torts.

In action for libel, where it was alleged that acts of husband were committed while he was in business of community, for benefit and use of community, but there was no allegation of commission of tort by the wife, she was not liable under the allegations and should have been dismissed as a party defendant unless the complaint was amended. *Browder v. Cook*, 59 F. Supp. 225 (D. Idaho 1944).

Where defendant husband committed the battery complained of where while he was actively and actually engaged in the management of the community business, the operation of a bar, and what he did in using a tear gas gun on plaintiff was intended to be for the protection of community property and in the interest of the community business, the community was responsible for his tort. *Hansen v. Blevins*, 84 Idaho 49, 367 P.2d 758 (1962).

##### Mutual Mistake.

To reform a mortgage, executed by husband and wife on community property, on the ground of mutual mistake, it must appear that the mistake existed as to both spouses. Such mortgage can not be reformed unless the mistake is traceable to the wife as well as the husband. This rule accords with the doctrine announced in this section requiring both spouses to join in any encumbrance of the community estate. *Metropolitan Life Ins. Co.*

v. McClelland, 57 Idaho 139, 63 P.2d 657 (1936).

Reformation of a conveyance of community property on the basis of mutual mistake is not proper unless both the husband-grantor and wife-grantor were mistaken. *Collins v. Parkinson*, 96 Idaho 294, 527 P.2d 1252 (1974).

### **Power to Encumber Community Property.**

While contracts normally will not be set aside merely because one spouse lacks the knowledge that community assets have been encumbered, a contract ought not be enforced against an unsuspecting spouse where the creditor collusively prevents the unsuspecting spouse from learning that his or her spouse is pledging community property and dissipating the proceeds received therefrom, and that the party in collusion has extended loans way beyond the security, and entirely without the bounds of reason and good judgment. *Smith v. Idaho State Univ. Fed. Credit Union*, 114 Idaho 680, 760 P.2d 19 (1988).

Although community real property cannot be encumbered unless both spouses sign the deed of trust or other instrument of conveyance, where one spouse did not sign a note, however, she did sign the deed of trust therewith, and where she was aware of the contract terms when the property was encumbered, the note was not impaired by any defect in the encumbrance upon the real property; in any event, other spouse's signature was enough to give force to the note. *Pocatello R.R. Employees Fed. Credit Union v. Galloway*, 117 Idaho 739, 791 P.2d 1318 (Ct. App. 1990).

Beehives were given to son by deceased father, per oral contract, as compensation for son's work which benefited the community property beekeeping business; deceased father bound the community property business to a contract for the payment of wages and bonuses to decedent's son and decedent's wife's consent to the terms of the contract was not legally required. *Mundell v. Stellmon*, 121 Idaho 413, 825 P.2d 510 (Ct. App. 1992).

### **Purpose.**

This section was enacted for protection of community property and may not be invoked to obtain an advantage over the community. *Mitchell v. Atwood*, 55 Idaho 772, 47 P.2d 680 (1935).

The purpose of this section is to protect the community, and it is not intended to permit one who has substantially profited by a contract within the statute to defeat payments to which he has agreed. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

A contract to convey community real estate which was not signed and acknowledged by both the husband and wife where both had

fully performed was not void since this section was enacted for the purpose of protecting the community and cannot be invoked by a third party to gain advantage over the community. *Tew v. Manwaring*, 94 Idaho 50, 480 P.2d 896 (1971).

### **Rights of Spouses.**

Wife has equal interest and ownership with husband. *Kohny v. Dunbar*, 21 Idaho 258, 121 P.2d 544 (1912); *McKinney v. Merritt*, 35 Idaho 600, 208 P. 244 (1922).

No distinction is made between husband and wife as to the degree, quantity, nature, or extent of interest each has in community property. *Ewald v. Hufton*, 31 Idaho 373, 173 P. 247 (1918); *Peterson v. Peterson*, 35 Idaho 470, 207 P. 425 (1922).

Interest of wife in community property is so vested in her that husband cannot deprive her of it by voluntary alienation for mere purpose of divesting her claim. *Gustin v. Byam*, 41 Idaho 538, 240 P. 600 (1925).

A wife's interest in community property is a present, vested interest, equal to that of the husband and is not a mere "expectancy." *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940).

The character of community property is fixed at the time of its acquisition and the wife's interest vests at that time. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 201 P.2d 976 (1948).

In this jurisdiction, the interest of the wife in community property is a present vested interest, equal in degree, nature and extent to that of the husband. *Hansen v. Blevins*, 84 Idaho 49, 367 P.2d 758 (1962).

Spouses have equal control over the entirety of their community property; they thus have the power to encumber more than their own half of the community, which power imposes the solemn duty of a fiduciary, and continues until the moment of the marriage's termination. *Compton v. Compton*, 101 Idaho 328, 612 P.2d 1175 (1980).

### **Valid Acknowledgment.**

Where plaintiff and her husband treated a deed of trust as valid, they accepted money from a bank based upon a note secured by the deed of trust, and plaintiff admitted that she signed the instrument, even if plaintiff's signature was not properly acknowledged, her conduct was consistent with the existence of a valid encumbrance, and plaintiff cannot raise the lack of valid acknowledgment as a defense to an action on the note. *Lowry v. Ireland Bank*, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

### **Valid Community Obligations.**

Obligations incurred by debtor husband in loans from his mother were valid community obligations since mother had a valid security



interest in farm equipment for 1986 loan and 1990 loan; 1986 security agreement provided it would also cover future advances and there was an adequate accounting by the debtor as to the proceeds from the sale of the farm equipment; therefore, distribution to pay such loans was proper. In re Kido, 142 Bankr. 924 (Bankr. D. Idaho 1992).

**Waiver of Protective Requirements.**

A party can waive the protective requirements of this section and even if an instrument lacks an acknowledgment of a spouse's signature, the spouse will be deemed to have waived the defect if his or her conduct is consistent with the existence and validity of the instrument. Lowry v. Ireland Bank, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

**Wife's Earnings.**

Money earned by married woman as laborer in orchards and packing houses or in caring for pasture of her stepfather, all while

living with her husband, was community property, of which she had the management and control. *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1929) (decided under former § 32-913).

**Cited in:** *Hughes v. Latour Creek R.R.*, 30 Idaho 475, 166 P. 219 (1917); *Corbett v. Vette*, 9 F.2d 773 (9th Cir. 1926); *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1929); *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954); *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956); *Harvey v. Brown*, 80 Idaho 379, 330 P.2d 982 (1958); *Dickerson v. Brewster*, 88 Idaho 330, 399 P.2d 407 (1965); *Boesiger v. De Modena*, 88 Idaho 337, 399 P.2d 635 (1965); *Jones v. State*, 91 Idaho 823, 432 P.2d 420 (1967); *Anderson v. Burns*, 96 Idaho 336, 528 P.2d 680 (1974); *Bair v. Barron*, 97 Idaho 26, 539 P.2d 578 (1975); *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1976); *Matheson v. Harris*, 98 Idaho 758, 572 P.2d 861 (1977); *Collins v. Parkinson*, 98 Idaho 871, 574 P.2d 913 (1978).

**RESEARCH REFERENCES**

**A.L.R.** — Gift or other voluntary transfer of community property by husband as fraud on wife. 64 A.L.R.3d 187.  
Inclusion of funds in savings bank trust (totten trust) in determining surviving spouse's interest in decedent's estate. 64 A.L.R.3d 187.

**32-912A. Husband adjudged insane. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** — This section, which comprised I.C., § 32-912A, as added by 1971, ch. 111, § 26, p. 233 was repealed by S.L. 1974, ch. 194, § 3.

**32-913. Payments from employee benefit plans — Adverse claims.**  
— Whenever payment or refund is made to an employee, former employee, or such person's beneficiary or heirs, legatees or estate pursuant to a written retirement, death, stock, or other employee benefit plan or savings plan such payment or refund shall fully discharge the employer, former employer, and any trustee or insurance company making such payment or refund from all adverse claims thereto unless such payment or refund is made within twenty (20) days following the death of such employee or former employee or unless before such payment or refund is made, the employer or former employer, where the payment or refund is made by the employer or former employer, has received at its principal place of business within this state or home office, written or oral notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment or refund, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state. Should said payment or refund be comprised in whole or in part of stock of any corporation, such corporation may accept said stock for



transfer as directed by the employer, former employer, or the trustee making such payment or refund, and shall be entitled to treat the transferee as the owner of said stock for all purposes unless the corporation has received, at its home office, written or oral notice by or on behalf of some other person that such other person claims to be entitled to such stock or to some interest therein. This section shall not affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer or former employer and the trustee or insurance company making such payment or refund or the corporation accepting such stock for transfer. [I.C., § 32-913, as added by 1977, ch. 168, § 1, p. 433.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-913, which comprised R.C., § 2686a, as added by 1915, ch. 75, § 2, p. 187; reen. C.L., § 2686a; C.S. § 4667; I.C.A., § 31-914, was repealed by S.L. 1974, ch. 194, § 4.

**32-914. Curtesy and dower abolished.** — No estate is allowed the husband tenant by curtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. [1867, p. 65, § 10; R.S., § 2506; reen. R.C. & C.L., § 2687; C.S., § 4668; I.C.A., § 31-915.]

#### JUDICIAL DECISIONS

**Cited in:** *France v. Connor*, 161 U.S. 65, 16 S. Ct. 497, 40 L. Ed. 619 (1896).

### 32-915. Support of infirm husband. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section, which comprised R.S., § 2507; reen. R.C. & C.L., § 2688; C.S., § 4669; I.C.A., § 31-916, was repealed by S.L. 1988, ch. 50, § 2.

**32-916. Property rights governed by chapter.** — The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement agreement entered into during marriage containing stipulations contrary thereto. [1867, p. 65, § 15; R. S., § 2508; reen. R.C. & C.L., § 2689; C.S., § 4670; I.C.A., § 31-917; am. 1980, ch. 299, § 1, p. 777; am. 1995, ch. 229, § 1, p. 780.]

#### JUDICIAL DECISIONS

##### ANALYSIS

Agreement to change rights.  
Ante-nuptial agreement.  
Contract with rights.  
Intent of parties.  
Statutory formalities.

#### Agreement to Change Rights.

A husband and wife may elect at any time to change their property rights, and this sec-

tion authorizes transmutation of separate property to community property and vice versa which may take place at any time.

Suchan v. Suchan, 106 Idaho 654, 682 P.2d 607 (1984).

**Ante-Nuptial Agreement.**

Where the parties had a comprehensive ante-nuptial agreement which they entered into prior to the marriage their property rights are determined by that agreement and not by this chapter. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

**Contract with Rights.**

Parties to a divorce action have rights given to them by law, but they are at liberty to contract with respect to those rights. *Vail v. Vail*, 117 Idaho 520, 789 P.2d 208 (Ct. App. 1990).

**Intent of Parties.**

There is authority in Idaho for agreements transmuted property at the time of the execution of the agreement, and for agreements transmuted property at the death of one of the spouses; the intent of the parties should, if possible, be ascertained from the language

contained in their contract, and, unless it contains absurdities or contradictions, the contract is the best evidence of the parties' intent. *Suchan v. Suchan*, 106 Idaho 654, 682 P.2d 607 (1984).

**Statutory Formalities.**

Although a husband and wife may elect at any time to change the character of their property from separate to community and vice versa, they may do so only in the manner provided or permitted by Idaho statutes, including §§ 32-917 — 32-919, by engaging in certain formalities; consequently, in dividing property in a divorce proceeding, the magistrate acted properly when she refused to recognize an alleged oral or informal transmutation of a wife's separate real property into community property during the marriage where there was no evidence of compliance with any of the statutory formalities. *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982).

**Cited in:** *Stevens v. Stevens*, 135 Idaho 224, 16 P.3d 900 (2000).

**32-917. Formalities required of marriage settlements.** — All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as conveyances of land are required to be executed and acknowledged or proved. [1867, p. 65, § 16; R.S., § 2509; reen. R.C. & C.L., § 2690; C.S., § 4671; I.C.A., § 31-918.]

**JUDICIAL DECISIONS**

**ANALYSIS**

Agreements in contemplation of divorce.  
 Illegal contract.  
 Noncompliance with statute.  
 Proving transmutation.

**Agreements in Contemplation of Divorce.**

Idaho appellate courts have repeatedly used the term "marriage settlements" to refer not only to prenuptial agreements, but also to agreements made with an eye towards separation and/or divorce, and because agreements made in contemplation of divorce are "marriage settlements," they are subject to the requirement of this section that they be in writing and acknowledged. *Stevens v. Stevens*, 135 Idaho 224, 16 P.3d 900 (2000).

**Illegal Contract.**

Transfer of quitclaim deed to marital property from husband to wife was an illegal contract and thus unenforceable where in exchange for the deed wife told husband she would not report to the police allegations that he had committed sexual improprieties with their daughter. *Quiring v. Quiring*, 130 Idaho 560, 944 P.2d 695 (1997).

**Noncompliance with Statute.**

Aside from stating that the community residence would be sold and any remaining money divided equally, the divorce decree did not address the division of the property; because the decree did not adjudicate any community personal property, the ex-husband's retirement accounts were omitted assets and because any agreement regarding the division of the retirement accounts was not in writing, it was unenforceable by either party. *Pike v. Pike*, 139 Idaho 406, 80 P.3d 342 (Ct. App. 2003).

**Proving Transmutation.**

Wife, having offered a document in an attempt to prove that its contents transmitted certain property from separate status to community property status, failed to sustain her burden of proving a transmutation, and also failed to demonstrate that the formalities required in §§ 32-917 through 32-919 had

been followed. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

In a divorce action, the magistrate's finding that a 1998 quitclaim deed from the husband to himself and the wife did not transmute the husband's home from separate to community property was supported by substantial competent evidence, because the husband signed the quitclaim deed simply because a lender presented it to him during a loan closing, he

signed it along with many other papers the lender presented to him, he had no intent to transmute his property into community property, and he alone signed the promissory note for the new loan. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

**Cited in:** *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982); *Keeven v. Wakley*, 110 Idaho 452, 716 P.2d 1224 (1986).

**32-918. Marriage settlements — Record.** — (1) When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

(2)(a) A summary of the contract may be recorded in lieu of the contract, under this chapter or the laws of this state, if the requirements of this section are substantially met.

(b) A summary of the contract shall be signed and acknowledged by all parties to the original contract. The summary of the contract shall clearly state:

(i) The names of the parties to the original contract;

(ii) The complete mailing address of all parties;

(iii) The title and date of the contract;

(iv) A description of the interest or interests in real property created by the contract; and

(v) The legal description of the property.

(c) Other elements of the contract may be stated in the summary.

(3) If the requirements of this section are met, the summary of the contract may be recorded under the provisions of this chapter and, as to the contents of the summary only, it shall have the same force and effect as if the original contract had been recorded, and constructive notice shall be deemed to be given concerning the contents of the summary and the existence of the contract to any subsequent purchasers, mortgagees, or other persons or entities that acquire an interest in the real property. [1867, p. 65, § 17; R.S., § 2510; reen. R.C. & C.L., § 2691; C.S., § 4672; I.C.A., § 31-919; am. 2005, ch. 124, § 1, p. 408.]

## JUDICIAL DECISIONS

### Proving Transmutation.

Wife, having offered a document in an attempt to prove that its contents transmitted certain property from separate status to community property status, failed to sustain her burden of proving a transmutation, and also failed to demonstrate that the formalities

required in §§ 32-917 through 32-919 had been followed. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

**Cited in:** *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982); *Keeven v. Wakley*, 110 Idaho 452, 716 P.2d 1224 (1986).

**32-919. Marriage settlements — Effect of record.** — The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a conveyance of real property. [1867, p. 65, § 18; R.S., § 2511; reen. R.C. & C.L., § 2692; C.S., § 4673; I.C.A., § 31-920.]



### STATUTORY NOTES

**Cross References.** — Effect of record of conveyance, § 55-811.

### JUDICIAL DECISIONS

**Proving Transmutation.**

Wife, having offered a document in an attempt to prove that its contents transmitted certain property from separate status to community property status, failed to sustain her burden of proving a transmutation, and also failed to demonstrate that the formalities

required in §§ 32-917 through 32-919 had been followed. *Wolford v. Wolford*, 117 Idaho 61, 785 P.2d 625 (1990).

**Cited in:** *Stockdale v. Stockdale*, 102 Idaho 870, 643 P.2d 82 (Ct. App. 1982); *Keeven v. Wakley*, 110 Idaho 452, 716 P.2d 1224 (1986).

**32-920. Marriage settlements — Capacity of minor.** — A minor capable of contracting marriage may make a valid marriage settlement. [1867, p. 65, § 20; R.S., § 2512; reen. R.C. & C.L., § 2693; C.S., § 4674; I.C.A., § 31-921.]

**32-921. Definitions.** — As used in this act:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. [I.C., § 32-921, as added by 1995, ch. 229, § 2, p. 780.]

### STATUTORY NOTES

**Prior Laws.** — Former § 32-921, which comprised I.C., § 32-921 as added by S. L. 1970, ch. 93, § 1, was repealed by S.L. 1971, ch. 111, § 7, effective July 1, 1972.

**Compiler's Notes.** — The words "this act" refer to S.L. 1995, ch. 229 which is compiled as 32-916, 32-921 — 32-929.

**Acknowledgement.** Following §§ 32-921 -- 32-929, the Uniform Premarital Agreement Act, appear "Comments" which are the comments prepared by the National Conference of Commissioners on Uniform State Laws. These comments were copyrighted by the National Conference of Commissioners on Uniform State Laws and reprinted with their permission.

In some instances the subsection, subdivision and etc. designations in the Idaho version of a section of the Uniform Premarital

Agreement Act are different than those of the official version. For instance § 32-923, Idaho Code contains subsections (1) and (2) with subsection (1) containing subdivisions (a) through (h). The official version of this section contains subsections (a) and (b) with subsection (a) containing subdivisions (1) through (8). Therefore a reference in the official comments to subsection (a) (1) and (2) would be a reference to subsections (1) (a) and (b) in the Idaho version. Idaho did not adopt §§ 11 — 13 of the official act.

**Comparable Provisions.** — **Montana.** Montana Code Ann., §§ 40-2-601 to 40-2-610.

**Nev.** Nev. Rev. Stat., §§ 123A.010 to 123A.100.

**Ore.** Or. Rev. Stat. §§ 108.700 to 108.740.

**Utah.** Utah Code Ann. §§ 30-8-1 to 30-8-9.

### COMMENT TO OFFICIAL TEXT

The definition of "premarital agreement" set forth in subsection (1) is limited to an agreement between prospective spouses made in contemplation of and to be effective upon marriage. Agreements between persons living together but not contemplating marriage (see

*Marvin v. Marvin*, 18 Cal.3d 660 (1976), judgment after trial modified. 122 Cal.App.3d 871 (1981)) and post-nuptial or separation agreements are outside the scope of this Act. Formal requirements are prescribed by Section 2. An illustrative list of matters which may be

included in an agreement is set forth in Section 3.

Subsection (2) is designed to embrace all forms of property and interests therein. These may include rights in a professional license or

practice, employee benefit plans, pension and retirement accounts, and so on. The reference to income or earnings includes both income from property and earnings from personal services.

**32-922. Formalities.** — A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration. The premarital agreement shall be executed and acknowledged or proved as provided in sections 32-917 through 32-919, Idaho Code. [I.C., § 32-922, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

This section restates the common requirement that a premarital agreement be reduced to writing and signed by both parties (see *Ariz.Rev.Stats.* § 25-201; *Ark.Stats.* § 55-310; *Cal.Civ. C.* § 5134; 13 *Dela.Code* 1974 § 301; *Idaho Code* § 32-917; *Ann.Laws Mass.* ch. 209, § 25; *Minn.Stats.Ann.* § 519.-11; *Montana Rev.C.* § 36-123; *New Mex. Stats.Ann.* 1978 40-2-4; *Ore.Rev.Stats.* § 108.140; *Vervon's Texas Codes Ann.* § 5.44; *Vermont Stats. Ann.* Title 12, § 181). Many states also require other formalities, including notarization or an acknowledgement (see, e.g., *Arizona*, *Arkansas*, *California*, *Idaho*, *Montana*, *New Mexico*) but may then permit the formal statutory requirement to be avoided or satisfied subsequent to execution (see *In re Marriage of Cleveland*, 76 *Cal.App.3d* 357 (1977) (premarital agreement never acknowledged but "proved" by sworn testimony of parties in dissolution proceeding)). This act dispenses with all formal requirements except a writing signed by both parties. Although the section is framed in the singular, the agreement may consist of one or more documents intended to be part of the agreement and executed as required by this section.

Section 2 also restates what appears to be the almost universal rule regarding the marriage as consideration for a premarital agreement (see, e.g., *Ga. Code* § 20-303; *Barnhill v. Barnhill*, 386 *So.2d* 749 (Ala.Civ.App.1980); *Estate of Gillian v. Estate of Gillian*, 406 *N.E.2d* 981 (Ind.App.1980); *Friedlander v. Friendlander*, 494 *P.2d* 208 (Was.1972); but cf.

*Wilson v. Wilson*, 170 *A.2d* 679, 685 (Me.1961)). The primary importance of this rule has been to provide a degree of mutuality of benefits to support the enforceability of a premarital agreement. A marriage is a prerequisite for the effectiveness of a premarital agreement under this act (see Section 4). This requires that there be a ceremonial marriage. Even if this marriage is subsequently determined to have been void. Section 7 may provide limits of enforceability of an agreement entered into in contemplation of that marriage. Consideration as such is not required and the standards for enforceability are established by Sections 6 and 7. Nevertheless, this provision is retained here as a desirable, if not essential, restatement of the law. On the other hand, the fact that marriage is deemed to be consideration for the purpose of this act does not change the rules applicable in other areas of law (see, e.g., 26 *U.S.C.A.* §§ 2043 (release of certain marital rights not treated as consideration for federal estate tax, 2512; *Merrill v. Fahs*, 324 *U.S.* 308, rehearing denied 324 *U.S.* 888 (release of marital rights in premarital agreement not adequate and full consideration for purposes of federal gift tax)).

Finally, a premarital agreement is a contract. As required for any other contract, the parties must have the capacity to contract in order to enter into a binding agreement. Those person who lack the capacity to contract but who under other provisions of law are permitted to enter into a binding agreement may enter into a premarital agreement under those other provisions of law.

**32-923. Content.** — (1) Parties to a premarital agreement may contract with respect to:

- (a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

- (c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
  - (d) The modification or elimination of spousal support;
  - (e) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;
  - (f) The ownership rights in and disposition of the death benefit from a life insurance policy;
  - (g) The choice of law governing the construction of the agreement; and
  - (h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.
- (2) The right of a child to support may not be adversely affected by a premarital agreement. [I.C., § 32-923, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

Section 3 permits the parties to contract in a premarital agreement with respect to any matter listed and any other matter not in violation of public policy or any statute imposing a criminal penalty. The matters are intended to be illustrative, not exclusive. Paragraph (4) of subsection (a) specifically authorizes the parties to deal with spousal support obligations. There is a split in authority among the states as to whether a premarital agreement may control the issue of spousal support. Some few states do not permit a premarital agreement to control this issue (see, e.g., *In re Marriage of Winegard*, 278 N.W.2d 505 (Iowa 1979); *Fricke v. Fricke*, 42 N.W.2d 500 (Wis.1950)). However, the better view and growing trend is to permit a premarital agreement to govern this matter if the agreement and the circumstances of its execution satisfy certain standars (see, e.g., *Newman v. Newman*, 653 P.2d 728

(Colo.Sup.Ct. 1982); *Parniawski v. Parniawski*, 359 A.2d 719 (Conn.1976); *Valid v. Valid*, 286 N.E.2d 42 (Ill.1972); *Osborne v. Osborne*, 428 N.E.2d 810 (Mass.1981); *Hudson v. Hudson*, 350 P.2d 596 (Okla.1960); *Unander v. Unander*, 506 P.2d 719 (Ore.1973)) (see Sections 7 and 8).

Paragraph (8) of subsection (a) makes clear that the parties may also contract with respect to other matters, including personal rights and obligations, not in violation of public policy or a criminal statute. Hence, subject to this limitation, an agreement may provide for such matters as the choice of abode, the freedom to pursue career opportunities, the upbringing of children, and so on. However, subsection (b) of this section makes clear that an agreement may not adversely affect what would otherwise be the obligation of a party to a child.

**32-924. Effect of marriage — Amendment — Revocation. —** A premarital agreement becomes effective upon marriage. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration. [I.C., § 32-924, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

This section establishes a marriage as a prerequisite for the effectiveness of a premarital agreement. As a consequence, the act does not provide for a situation where persons live together without marrying. In that situation, the parties must look to the other law of the jurisdiction (see *Marvin v. Marvin*, 18 Cal.3d

660 (1976); judgment after trial modified, 122 Cal.App.3d 871 (1981)).

This section requires the same formalities of execution for an amendment or revocation of a premarital agreement as are required for its original execution (cf. *Estate of Gillian v. Estate of Gillian*, 406 N.E.2d 981



(Ind.App.1980) (agreement may be altered by subsequent agreement but not simply by inconsistent acts).

**32-925. Enforcement.** — (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (a) That party did not execute the agreement voluntarily; or
- (b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
  - (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
  - (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
  - (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law. [I.C., § 32-925, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

This section sets forth the conditions which must be proven to avoid the enforcement of a premarital agreement. If prospective spouses enter into a premarital agreement and their subsequent marriage is determined to be void, the enforceability of the agreement is governed by Section 7.

The conditions stated under subsection (a) are comparable to concepts which are expressed in the statutory and decisional law of many jurisdictions. Enforcement based on disclosure and voluntary execution is perhaps most common (see, e.g., Ark. Stats. § 55-309; Minn.Stats.Ann. § 519.11; *In re Kaufmann's Estate*, 171 A.2d 48 (Pa.1961) (alternate holding)). However, knowledge or reason to know, together with voluntary execution, may also be sufficient (see, e.g., Tenn.Code Ann. § 36-606; *Barnhill v. Barnhill*, 386 So.2d 479 (Ala.Civ.App.1980); *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla.1962); *Coward and Coward*, 582 P.2d 834 (Or.App. 1978); but see *Matter of Estate of Lebsock*, 618 P.2d 683 (Colo.App. 1980)) and so may a voluntary, knowing waiver (see *Hafner v. Hafner*, 295 N.W.2d 567 (Minn.1980)). In each of these situations, it should be underscored that execution must have been voluntary (see *Lutgert*

*v. Lutgert*, 338 So.2d 1111 (Fla.1976); see also 13 Dela.Code 1974 § 301 (10 day waiting period)). Finally, a premarital agreement is enforceable if enforcement would not have been unconscionable at the time the agreement was executed (cf. *Hartz v. Hartz*, 234 A.2d 865 (Md.1967) (premarital agreement upheld if no disclosure but agreement was fair and equitable under the circumstances)).

The test of "unconscionability" is drawn from Section 30 of the Uniform Marriage and Divorce Act (UMDA) (see *Ferry v. Ferry*, 586 S.W.2d 782 (Mo.1979); see also *Newman v. Newman*, 653 P.2d 728 (Colo.Sup.Ct.1982) maintenance provisions of premarital agreement tested for unconscionability at time of marriage termination)). The following discussion set forth in the Commissioner's Note to Section 306 of the UMDA is equally appropriate here:

"Subsection (b) undergirds the freedom allowed the parties by making clear that the terms of the agreement respecting maintenance and property disposition are binding upon the court unless those terms are found to be unconscionable. The standard of unconscionability is used in commercial law, where its meaning includes protection

against onesideness, oppression, or unfair surprise (see section 2-302, Uniform Commercial Code), and in contract law, *Scott v. U.S.*, 12 Wall (U.S.) 443 (1870) ('contract ... unreasonable and unconscionable but not void for fraud'); *Stiefler v. McCullough*, 174 N.E.823, 97 Ind.App. 123 (1931); *Terre Haute Cooperative v. Branscome*, 35 So.2d 537, 203 Miss. 493 (1948); *Carter v. Boone County Trust Co.*, 92 S.W.2d 647, 338 Mo. 629 (1936). It has been used in cases respecting divorce settlements or awards. *Bell v. Bell*, 371 P.2d 773, 150 Colo. 174 (1962) ('this division of property is manifestly unfair, inequitable and unconscionable'). Hence the act does not introduce a novel standard unknown to the law. In the context of negotiations between spouses as to the financial incidents of their marriage, the standard includes protection against overreaching, concealment of assets, and sharp dealing not consistent with the obligations of marital partners to deal fairly with each other.

"In order to determine whether the agreement is unconscionable, the court may look to the economic circumstances of the parties resulting from the agreement, and any other relevant evidence such as the conditions under which the agreement was made, including the knowledge of the other party. If the court finds the agreement not unconscionable, its terms respecting property division and maintenance may not be altered by the court at the hearing."

(Commissioner's Note, Sec. 306, Uniform Marriage and Divorce Act.)

Nothing in Section 6 makes the absence of assistance of independent legal counsel a condition for the unenforceability of a premarital agreement. However, lack of that assistance may well be a factor in determining whether the conditions stated in Section 6 may have existed (see e.g., *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla.1962)).

Even if the conditions stated in subsection (a) are not proven, if a provision of a premar-

ital agreement modifies or eliminates spousal support, subsection (b) authorizes a court to provide very limited relief to a party who would otherwise be eligible for public welfare (see, e.g., *Osborne v. Osborne*, 428 N.E.2d 810 (Mass.1981) (dictum); *Unander v. Unander*, 506 P.2d 719 (Ore.1973) (dictum)).

No special provision is made for enforcement of provisions of a premarital agreement relating to personal rights and obligations. However, a premarital agreement is a contract and these provisions may be enforced to the extent that they are enforceable are under otherwise applicable law (see *Avitzur v. Avitzur*, 459 N.Y.S.2d 572 (Ct.App.)).

Section 6 is framed in a manner to require the party who alleges that a premarital agreement is not enforceable to bear the burden of proof as to that allegation. The statutory law conflicts on the issue of where the burden of proof lies (contrast *Ark.Stats. § 55-313*; 31 *Minn.Stats. Ann. § 519.11* with *Vernon's Texas Codes Ann. § 5.45*). Similarly, some courts have placed the burden on the attacking spouse to prove the invalidity of the agreement. *Linker v. Linker*, 470 P.2d 921 (Colo.1970); *Matter of Estate of Benker*, 296 N.W.2d 167 (Mich.App.1980); *In re Kauffmann's Estate*, 171 A.2d 48 (Pa.1961). Some have placed the burden upon those relying upon the agreement to prove its validity. *Hartz v. Hartz*, 234 A.2d 865 (Md.1967). Finally, several have adopted a middle ground by stating that a premarital agreement is presumptively valid but if a disproportionate disposition is made for the wife, the husband bears the burden of proof of showing adequate disclosure. (*Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla.1962); *Christians v. Christians*, 44 N.W.2d 431 (Iowa 1950); *In re Neis' Estate*, 225 P.2d 110 (Kans.1950); *Truitt v. Truitt's Adm'r*, 162 S.W.2d 31 (Ky.1942); *In re Estate of Strickland*, 149 N.W.2d 344 (Nev.1967); *Kosik v. George*, 452 P.2d 560 (Or.1969); *Friedlander v. Friedlander*, 494 P.2d 208 (Wash.1972).

**32-926. Enforcement — Void marriage.** — If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result. [I.C., § 32-926, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

Under this section a void marriage does not completely invalidate a premarital agreement but does substantially limit its enforceability. Where parties have married and lived together for a substantial period of time and one or both have relied on the existence of a

premarital agreement, the failure to enforce the agreement may well be inequitable. This section, accordingly, provides the court discretion to enforce the agreement to the extent necessary to avoid the inequitable result (see *Annot.*, 46 A.L.R.3d 1403).

**32-927. Limitation of actions.** — Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled as to the premarital agreement during the marriage of the parties. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party. [I.C., § 32-927, as added by 1995, ch. 229, § 2, p. 780.]

#### COMMENT TO OFFICIAL TEXT

In order to avoid the potentially disruptive effect of compelling litigation between the spouses in order to escape the running of an applicable statute of limitations. Section 8 tolls any applicable statute during the marriage of the parties (contrast *Dykema v. Dykema*, 412 N.E.2d 13 (Ill.App.1980) (stat-

ute of limitations not tolled where fraud not adequately pleaded, hence premarital agreement enforced at death)). However, a party is not completely free to sit on his or her rights because the section does preserve certain equitable defenses.

**32-928. Application and construction.** — This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [I.C., § 32-928, as added by 1995, ch. 229, § 2, p. 780.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1995, ch.229 which is compiled as §§ 32-916, and 32-921 — 32-929.

#### COMMENT TO OFFICIAL TEXT

Section 9 is a standard provision in all Uniform Acts.

**32-929. Short title.** — This act may be cited as the "Uniform Premarital Agreement Act." [I.C., § 32-929, as added by 1995, ch. 229, § 2, p. 780.]

#### STATUTORY NOTES

**Compiler's Notes.** — The words "this act" refer to S.L. 1995, ch.229 which is compiled as §§ 32-916 and 32-921 — 32-929.

#### COMMENT TO OFFICIAL TEXT

This is the customary "short title" clause, which may be placed in that order in the bill

for enactment as the legislative practice of the state prescribes.

### CHAPTER 10

#### PARENT AND CHILD

##### SECTION.

32-1001. Allowance to parent for support of child.

32-1002. Reciprocal duties of support.

##### SECTION.

32-1003. Liability of parent for child's necessities.

32-1004. Wages of minors.



SECTION.

32-1005. Custody of children after separation of parents.  
 32-1006. Legitimation of issue by marriage.  
 32-1007. Rights of parents over children.  
 32-1008. [Repealed.]

SECTION.

32-1008A. Responsibility of relatives to participate in the cost of nursing home care.  
 32-1009. Paternity fraud — Child support restitution.

**32-1001. Allowance to parent for support of child.** — The proper court may direct an allowance to be made to the parent of a child, out of its property for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit. [R.S., § 2530; reen. R.C. & C.L., § 2694; C.S., § 4675; I.C.A., § 31-1001.]

STATUTORY NOTES

**Cross References.** — Adopted children, legal relationship, § 16-1508; duties of natural parents released, § 16-1509.

Adoption of children by home-finding societies, § 16-1601 et seq.

Artificial insemination, §§ 39-5401 — 39-5407.

Delinquent children, youth rehabilitation, § 20-501 et seq.

Domestic violence project grants, §§ 39-5201 — 39-5213.

New birth certificate when child legitimated by marriage of parents, § 39-259.

Registration of births, § 39-256.

Termination of parent and child relationship, §§ 16-2001 — 16-2015.

Wage assignment by parents, court order for, § 8-704.

**32-1002. Reciprocal duties of support.** — It is the duty of the father, the mother and the child or children of any poor person who is unable to maintain himself or herself by work, to maintain such poor person to the extent of his or her ability. Whenever any person shall apply for aid to any county within this state under its indigent laws, and it shall at any time appear to the county commissioners that said poor person has a father, mother, child or children who is able to maintain him or her, but fails so to do, it shall be the duty of the said commissioners to furnish all necessary aid and said commissioners may bring a civil suit against such father, mother, child or children to recover the amount so expended, in the name of the county. The promise of an adult child to pay for necessities previously furnished to such parents is binding. [R.S., § 2531; am. 1897, p. 52, § 1; reen. 1899, p. 301, § 1; reen. R.C. & C.L., § 2695; C.S., § 4676; I.C.A., § 31-1002; am. 1988, ch. 268, § 1, p. 885.]

STATUTORY NOTES

**Cross References.** — Wages of parents, assignment for child support, § 8-704.

ch. 268 declared an emergency. Approved March 31, 1988.

**Effective Dates.** — Section 2 of S.L. 1988,

JUDICIAL DECISIONS

ANALYSIS

Actions against parents for support.  
 Diversion of funds.  
 Duties and liabilities.  
 Duty of grandparent.  
 Incarcerated parent.  
 Legal questions.

Separate property of husband and wife.  
Willfulness.  
Workers' compensation law.  
Wrongful birth.

### **Actions Against Parents for Support.**

To warrant recovery by county in action against parent, it must be alleged that child cared for was indigent person and that county had furnished aid under indigent laws in sum claimed. *Bannock County v. Coffin*, 46 Idaho 531, 269 P. 90 (1928).

### **Diversion of Funds.**

Where in an action to modify child support the father was intermittently employed prior to his incarceration, had paid some of his attorney fees and had acquired a new motor vehicle, the record was sufficiently clear to preclude the necessity of additional findings by the trial court regarding his ability to pay support, and there was no error in the court's conclusion that he was in contempt of court for diverting funds to his criminal defense instead of paying child support. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

### **Duties and Liabilities.**

The reciprocal duties mentioned in this section provide a duty and liability of the father, mother, child or children of a poor person who is unable to maintain himself or herself by work. *Sanders v. Ray*, 67 Idaho 200, 174 P.2d 836 (1946).

Father has duty to provide for child, hence failure to fulfill duty will be weighed against him in determining custody of child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

This section and § 32-1003 clearly do not limit a parent's duty of support by equating it with the child's eligibility for public assistance under the statutes and regulations governing the welfare system. *State, Dep't of Health & Welfare ex rel. Bowler v. Bowler*, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

### **Duty of Grandparent.**

A grandparent has no duty to support a needy grandchild. *Haggard v. Idaho Dep't of Health & Welfare*, 98 Idaho 55, 558 P.2d 84 (1977).

### **Incarcerated Parent.**

Imposing upon the incarcerated parent a continuing support obligation, beyond his ability to pay, does not help the child; therefore, the parent is not liable for child support payments while incarcerated on an unrelated criminal conviction. *Nab v. Nab*, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

### **Legal Questions.**

The question of whether the county could require reimbursement from the mother's re-

mainder interest in property is a legal, rather than a factual, one; therefore, the district court is not bound by the county's decision as to whether a future interest is subject to be taken under the county's right of reimbursement under this section. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

### **Separate Property of Husband and Wife.**

Where necessary in order to provide support and education for the children the court may resort to the separate property of the husband and of the wife for that purpose. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

### **Willfulness.**

The statutes providing for parental reimbursement of assistance to a child do not contain the term "willfully." That word comes from a criminal statute, § 18-401, which authorizes imposition of criminal penalties in certain cases of nonsupport. It may be that the state is put to more rigorous elements of proof if it seeks criminal penalties, but no such penalties are at issue here. "Willfulness" is not a required element of proof in a civil reimbursement case. *State, Dep't of Health & Welfare ex rel. Bowler v. Bowler*, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

### **Workers' Compensation Law.**

This section is not a part of the Workers' Compensation Law and is not applicable thereto. *Sanders v. Ray*, 67 Idaho 200, 174 P.2d 836 (1946).

### **Wrongful Birth.**

In an action for wrongful birth against a physician whose professional negligence resulted in child being born with congenital defects, parents may recover damages for the costs of medical and hospital care, emotional distress, and expenses for support and maintenance of the child beyond the age of majority; however, in determining damages for emotional injury, countervailing emotional benefits attributable to the birth of the child should be considered and the award should be adjusted accordingly. *Blake v. Cruz*, 108 Idaho 253, 698 P.2d 315 (1984).

**Cited in:** *Miller v. G.L. Arnett & Son*, 58 Idaho 420, 74 P.2d 177 (1937); *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150 (1985); *State, Dep't of Health & Welfare ex rel. Gage v. Engelbert*, 114 Idaho 89, 753 P.2d 825 (1988).

## OPINIONS OF ATTORNEY GENERAL

The intent of a proposed waiver application for a demonstration project under 42 U.S.C. § 1315 is to create a demonstration project along the lines of this state's relative responsibility law as that law is contained in § 32-

1008A; if the application were carefully drafted to incorporate that precise intent, this section and §§ 32-901, 32-1003, 56-203A, 56-203B, 56-209b, and 66-414 would be irrelevant. OAG 85-10.

**32-1003. Liability of parent for child's necessities.** — If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent. [R.S., § 2532; reen. R.C. & C.L., § 2696; C.S., § 4677; I.C.A., § 31-1003.]

## STATUTORY NOTES

**Cross References.** — Desertion and non-support of wife and children, §§ 18-401 — 18-405.

## JUDICIAL DECISIONS

### ANALYSIS

Action by third party.  
Custody decree.  
Obligation of father.  
Parents equally liable.  
Parent's liability not limited.  
Recovery of medical expenses.  
Support.  
Willfulness.

### Action by Third Party

There is no reason to bar a third party from bringing an action to recover the reasonable value of necessities supplied in good faith to a child born out of wedlock against a person later adjudged to be liable for the support of the child in a paternity action. *Isaacson v. Obendorf*, 99 Idaho 304, 581 P.2d 350 (1978).

### Custody Decree.

A decree granting custody of children to a third person does not relieve the parents of their obligation of support. *Stafford v. Field*, 70 Idaho 331, 218 P.2d 338 (1950).

### Obligation of Father.

It is the obligation of the father to support his minor child. In *re Wilson's Guardianship*, 68 Idaho 486, 199 P.2d 261 (1948).

An order in a divorce action for the husband to pay the expenses of a child born to the parties subsequent to their separation direct to the creditors instead of to the wife was for the husband's protection, as such creditors, under this section, could proceed against him directly to recover such sums. *Voss v. Voss*, 91 Idaho 17, 415 P.2d 303 (1966).

### Parents Equally Liable.

Mother, as well as father, is liable for the support of their minor child, and if they neglect to provide articles necessary for its support, according to their circumstances, they or either of them may be compelled to do so. *State v. Beslin*, 19 Idaho 185, 112 P. 1053 (1911).

### Parent's Liability Not Limited.

Section 32-1002 and this section clearly do not limit a parent's duty of support by equating it with the child's eligibility for public assistance under the statutes and regulations governing the welfare system. *State, Dep't of Health & Welfare ex rel. Bowler v. Bowler*, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

### Recovery of Medical Expenses.

Where parents did not object to child's action for recovery of medical expenses, but rather, filed a ratification and testified on the child's behalf, these acts constituted a waiver by the parents of their right of recovery. *Lasselle v. Special Prods. Co.*, 106 Idaho 170, 677 P.2d 483 (1983).

This section does not purport to limit a



child's right to recover his medical expenses; allowing the child to recover if the parents waive their primary right of recovery does not require the defendant to pay the minor's medical expenses twice and the parents' waiver adequately protects the defendant. *Lasselle v. Special Prods. Co.*, 106 Idaho 170, 677 P.2d 483 (1983).

#### **Support.**

Right of minor child to support by father is not limited or abridged by the fact that father and mother are disputing the custody. *Richardson v. Richardson*, 72 Idaho 19, 236 P.2d 718 (1951).

Where minor child was living with paternal grandparents during absence of father in service, and mother who had remarried was able to furnish child with a comfortable home, decree was modified by awarding custody to mother with provision that father be required

to pay a reasonable sum for support and maintenance of the child. *Richardson v. Richardson*, 72 Idaho 19, 236 P.2d 718 (1951).

#### **Willfulness.**

The statutes providing for parental reimbursement of assistance to a child do not contain the term "wilfully." That word comes from a criminal statute, § 18-401, which authorizes imposition of criminal penalties in certain cases of nonsupport. It may be that the state is put to more rigorous elements of proof if it seeks criminal penalties, but no such penalties are at issue here. "Willfulness" is not a required element of proof in a civil reimbursement case. *State, Dep't of Health & Welfare ex rel. Bowler v. Bowler*, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

**Cited in:** *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962); *Nebeker v. Piper Aircraft Corp.*, 113 Idaho 609, 747 P.2d 18 (1987).

### **OPINIONS OF ATTORNEY GENERAL**

The intent of a proposed waiver application for a demonstration project under 42 U.S.C. § 1315 is to create a demonstration project along the lines of this state's relative responsibility law as that law is contained in § 32-

1008A; if the application were carefully drafted to incorporate that precise intent, this section and §§ 32-901, 32-1002, 56-203A, 56-203B, 56-209b, and 66-414 would be irrelevant. OAG 85-10.

**32-1004. Wages of minors.** — The wages of a minor employed in service may be paid to him, unless, within thirty (30) days after the commencement of the service the parent or guardian entitled thereto gives the employer notice that he claims such wages. [R.S., § 2533; reen. R.C. & C.L., § 2697; C.S., § 4678; I.C.A., § 31-1004.]

### **JUDICIAL DECISIONS**

#### **Disposition of Son's Wages.**

Where debtor agrees with his creditor that the services and earnings of his infant son may be retained by creditor in part payment of the indebtedness, he can not, by emanci-

pating his son or donating to him his earnings, avoid payment of such indebtedness and thereby give son right to recover for such services. *Tuckey v. Lovell*, 8 Idaho 731, 71 P. 122 (1902).

**32-1005. Custody of children after separation of parents.** — (1) When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

(2) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life

activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the affect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(3) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. If a parent has a disability as defined in this chapter the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what affect, if any, the court finds the disability has on the best interests of the child. [R.S., § 2534; reen. R.C. & C.L., § 2698; C.S., § 4679; I.C.A., § 31-1005; am. 2002, ch. 232, § 2, p. 663.]

## STATUTORY NOTES

**Cross References.** — Child custody jurisdiction act, §§ 32-1101 — 32-1126.

## JUDICIAL DECISIONS

### ANALYSIS

Award of custody.  
Discretion of court.  
Duty to support.  
Jurisdiction.  
Separate property.

### Award of Custody.

Upon the entry of a separate maintenance decree to the wife for the fault of the husband, the court properly awarded the custody of the children to the mother. *Radermacher v.*

*Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940).

Upon application of a husband or wife, living in a state of separation without being divorced, a district court may inquire into the

custody of any unmarried child to the marriage and award its custody to either parent, being guided by the welfare of the child. *Radermacher v. Radermacher*, 61 Idaho 261, 100 P.2d 955 (1940).

In case of doubt, custody of a child of tender age or a girl will be awarded to the mother. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Mother will not be deprived of custody of a child unless the proof clearly shows that she is an unfit person for custody of the child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

Superior right of mother to custody of child can not be defeated merely on the argument that father has a superior economic position. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

#### **Discretion of Court.**

Court in exercising its discretion in awarding custody of children will consider as a paramount factor the welfare and best interest of the child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

#### **Duty to Support.**

Father has duty to provide for child, hence failure to fulfill duty will be weighed against

him in determining custody of child. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

#### **Jurisdiction.**

District courts have jurisdiction to provide for custody of children in event of separation or divorce of parents. *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951).

District court had jurisdiction to determine custody of minor child whose parents had been divorced in a county other than that in which complaint for custody had been filed, where plaintiff was a resident of the state and personal service had been obtained against defendant within jurisdiction of court, since statutes governing custody of children had not limited original jurisdiction of district court in cases both at law and equity granted by Const., art. 5, § 20. *Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951).

#### **Separate Property.**

Where necessary in order to provide support and education for the children the court may resort to the separate property of the husband and of the wife for that purpose. *Jones v. State*, 85 Idaho 135, 376 P.2d 361 (1962).

**Cited in:** *Wood v. Wood*, 96 Idaho 100, 524 P.2d 1072 (1974).

### **RESEARCH REFERENCES**

**A.L.R.** — Religion as factor in visitation cases. 95 A.L.R.5th 533.

**32-1006. Legitimation of issue by marriage.** — A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [1877, ch. 24, § 21; R.S., § 2535; reen. R.C. & C.L., § 2699; C.S., § 4680; I.C.A., § 31-1006.]

### **STATUTORY NOTES**

**Cross References.** — Annulment of marriage for any reason other than fraud, legitimacy and support of children, § 32-503.

**32-1007. Rights of parents over children.** — The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either the father or mother be dead or be unable or refuse to take the custody or has abandoned his or her family, the other is entitled to the child's custody, services and earnings. [R.C., § 2699a, as added by 1915, ch. 120, § 1, p. 265; compiled and reen. C.L., § 2699a; C.S., § 4681; I.C.A., § 31-1007.]



## STATUTORY NOTES

**Cross References.** — Severance of parent and child relationship, §§ 16-2001 — 16-2015.

## JUDICIAL DECISIONS

## ANALYSIS

Appointment of coguardians.  
Burden of proving right to custody.  
Child's interest controlling.  
Father's custody not exclusive.  
Loss of right.  
Parent's right to custody of child.  
Right to fix domicile.

**Appointment of Coguardians.**

The magistrate's order appointing the grandparents coguardians of two minor children was a binding adjudication that the best interests of the minor children would be served by the requested appointment. *Revello v. Revello*, 100 Idaho 829, 606 P.2d 933 (1979).

**Burden of Proving Right to Custody.**

In habeas corpus proceeding to obtain custody of child from maternal grandparents, burden is on latter to prove father's forfeiture of right to custody by abandonment of children or that he is unsuitable. *Schiller v. Douglas*, 48 Idaho 803, 285 P. 1021 (1930).

Person seeking custody of child from natural parent has the burden of proving abandonment or a forfeiture of parent's statutory right to custody or that the parent is unfit or unable to properly care for the child. *Freund v. English*, 83 Idaho 140, 358 P.2d 1038 (1961).

A father, seeking custody of his minor son by writ of habeas corpus from the maternal grandparents after the death of the mother, sustained his burden of proof by showing that he was the natural father of the child and the burden was then upon the defendants to prove that he was unfit or unable to properly care for the child or that he had forfeited his right by abandonment. *Blankenship v. Brookshier*, 91 Idaho 317, 420 P.2d 800 (1966).

**Child's Interest Controlling.**

Where legal right of parent to custody of child is not clear, the best interests of the child will govern court. *Andrino v. Yates*, 12 Idaho 618, 87 P. 787 (1906).

Where custody of a twelve-year-old girl is in dispute, court may consult wishes of child to aid in determining what will be for the best interest of child. *Andrino v. Yates*, 12 Idaho 618, 87 P. 787 (1906).

In a proceeding to determine custody of a child between parent and third party the court should consider the following factors: (1) interest of the parents, (2) interest of third

party caring for the child, and (3) interest of the child. In *re Altmiller*, 76 Idaho 521, 285 P.2d 1064 (1955).

In a proceeding of habeas corpus filed by father to obtain custody of child who was in the home of the grandmother, a determination in favor of the father based on ground that he was a fit person to take care of his child even though he had not supported child for five years due to sickness and insufficient funds, was set aside by the Supreme Court on the ground that father was not in a position to adequately care for the child whereas the grandmother had given the child a comfortable home to which the child was much attached. In *re Altmiller*, 76 Idaho 521, 285 P.2d 1064 (1955).

While a parent has a natural right to the care, custody, and control of his child, however the child's welfare controls the parent's statutory right to custody. *Freund v. English*, 83 Idaho 140, 358 P.2d 1038 (1961).

**Father's Custody Not Exclusive.**

Father has no absolute right to deprive mother of the care and custody of infant child simply because he is the father. *State v. Beslin*, 19 Idaho 185, 112 P. 1053 (1911).

**Loss of Right.**

Legal right to the custody of minor may be abandoned or forfeited by the acts or conduct of parent, and in such case, parent may be equitably estopped from asserting such legal right. *Andrino v. Yates*, 12 Idaho 618, 87 P. 787 (1906).

In view of this and other provisions of the statutes regarding the custody of children upon the divorce of their parents, the custody should be awarded to one or both of the parents, or, if they are unfit or unable to accept such custody, to a third person, after the court has received evidence as to his qualifications. *Piatt v. Piatt*, 32 Idaho 407, 184 P. 470 (1919).

A father who, after a divorce in which

custody of his children was given to his wife and after the wife's remarriage and removal to the state of Connecticut, failed to make substantial contribution to their support, to visit them, or to make sufficient inquiry to learn of their whereabouts was not entitled to their custody as against their step-father after the death of their mother. *Clark v. Jelinek*, 90 Idaho 592, 414 P.2d 892 (1966).

#### **Parent's Right to Custody of Child.**

If the parent is competent to transact his or her own business, and is not otherwise unsuitable, the custody of the child is not to be given to another, even though such other may be a more suitable person. *Spaulding v. Chil-*

*dren's Home Finding & Aid Soc'y*, 89 Idaho 10, 402 P.2d 52 (1965).

In normal situations, the natural parents are entitled to custody of the child unless it is affirmatively shown that the parent has abandoned the child or that he is unsuitable. *Yearsley v. Yearsley*, 94 Idaho 667, 496 P.2d 666 (1972).

#### **Right to Fix Domicil.**

The father may fix the domicil of the children. *Duryea v. Duryea*, 46 Idaho 512, 269 P. 987 (1928).

**Cited in:** *Pullman v. Klingenberg*, 95 Idaho 424, 510 P.2d 488 (1973).

### **32-1008. Right of grandparents to visitation. [Repealed.]**

#### **STATUTORY NOTES**

**Compiler's Notes.** — This section, which comprised I.C., § 32-1008, as added by 1972, ch. 125, § 1, p. 249, was repealed by S.L. 1994, ch. 407, § 2, effective July 1, 1994.

**32-1008A. Responsibility of relatives to participate in the cost of nursing home care.** — (1) When it is necessary for a person to reside as a medicaid patient in a licensed skilled nursing facility or licensed intermediate care facility as either is defined in section 39-1301, Idaho Code, such person's relatives as described in this section shall be responsible to the extent of their ability to repay the department of health and welfare for the cost of necessary medical or remedial care provided by the facility. Each responsible relative of a medicaid recipient may be required to pay not more than twenty-five percent (25%) of the amount which was paid for such patient under the medical assistance program pursuant to chapter 1, title 56, Idaho Code, but not more than one hundred percent (100%) of the amount which was paid under the medical assistance program shall be collected by the department from all responsible relatives of a medicaid recipient.

(2) Relatives responsible to participate in the cost of skilled or intermediate facility care include spouses, natural and adoptive children, or natural or adoptive parents when the patient is under eighteen (18) years of age, or blind, or disabled as defined in section 1614(a) of the social security act.

(3) The director of the department of health and welfare is hereby authorized to enact and enforce regulations which establish whether and to what extent the medicaid patient's relative shall participate in the cost of the patient's care, giving due consideration to the relative's obligations for dependents. The director shall establish a procedure to permit any relative to contest their responsibility derived from this section. If such petition is denied, a hearing may be requested under the provisions of chapter 52, title 67, Idaho Code.

(4) In the event that similar provisions are enacted by other states, the director is authorized and directed to pursue reciprocity of enforcement of this section.

(5) The amounts paid by relatives of medicaid patients shall be collected by the department of health and welfare and the state's share deposited in the medical assistance account established by section 56-209a(2) [§ 56-209b(2)], Idaho Code. [I.C., § 32-1008A, as added by 1983, ch. 198, § 1, p. 537.]

### STATUTORY NOTES

**Federal References.** — Section 1614(a) of the social security act, referred to in subsection (2), is compiled as 42 U.S.C. § 1382c.

**Compiler's Notes.** — The bracketed reference "§ 56-209b(2)" in subsection (5) was inserted by the compiler since it is the section that establishes the medical assistance fund.

**Effective Dates.** — Section 2 of S.L. 1983,

ch. 198 provided that the act shall be in full force and effect on and after October 1, 1983, and provided that subsection (3) of this section shall be in full force and effect on and after July 1, 1983, for the purpose of adoption of rules and regulations implementing the provisions of the act.

### OPINIONS OF ATTORNEY GENERAL

Since the state has a legitimate interest in relieving the public treasury of some of the burden of support, and the selection of parents and children as "responsible" parties is rational in view of the special and, presumptively, perpetual nature of the relationship between parent and child, this section is not facially violative of equal protection; however, enforcement procedures could produce an inequitable application of the law which could result in its characterization as an unconstitutional deprivation of equal protection. OAG 84-7.

This section is inconsistent with federal law regulating the use of Medicaid funds; a continuation of the statutory scheme could subject this state to federal sanctions and/or private court actions which could result in a declaration of the invalidity of the enactment. OAG 84-7.

In the event that a responsible relative does not voluntarily comply with the provisions of the program, the Department of Health and Welfare would be required to obtain a judgment or support order in a district court prior to being able to enforce judgment and execute thereon. OAG 85-10.

It is the responsibility of the federal government to determine whether those provisions of this section which violate the Social Security Act, 42 U.S.C. § 1396a(17)(D), by selecting out only the parents, spouses, and adult children of Medicaid nursing home clients can be waived pursuant to section 1115 of the same act. OAG 85-10.

The intent of a proposed waiver application for a demonstration project under 42 U.S.C. § 1315 is to create a demonstration project along the lines of this state's relative responsibility law as that law is contained in this section; if the application were carefully drafted to incorporate that precise intent, §§ 32-901, 32-1002, 32-1003, 56-203A, 56-203B, 56-209b, and 66-414 would be irrelevant. OAG 85-10.

The Department of Health and Welfare can not collect from responsible relatives any amounts paid by Medicaid before the effective date of promulgation of this section. OAG 85-10.

This section and § 5-514 do not give the state Department of Health and Welfare jurisdiction and authority to collect relative responsibility payments from responsible relatives who do not reside in this state. OAG 85-10.

Under the waiver/demonstration project as guided by the existing provisions of subsection (5) of this section, the amounts collected under such a relative responsibility program would be received by the Department of Health and Welfare and not by the applicant or recipient; such a process which would count as third party liability payment and not count such payments as income in determining medical eligibility would not place the state out of conformance with federal laws and rules regulating the use of Medicaid funds if a specific waiver of 42 CFR 435.602 and 42 CFR 436.602 is included in the application. OAG 85-10.

**32-1009. Paternity fraud — Child support restitution.** — Notwithstanding any other provision of law to the contrary, a court shall vacate a child support order if the court finds, by clear and convincing evidence, that



the moving party is not the biological father of the child who is the subject of the support order, and that the obligee knowingly and intentionally misrepresented the paternity of the child to the obligor. The obligor shall file the motion to vacate the order within two (2) years of discovery of evidence that he is not the biological father of the child. If the order is vacated, the obligor may bring an action in court against the obligee or the true biological father of the child to obtain restitution for child support previously paid pursuant to the order. [I.C., § 32-1009, as added by 2004, ch. 274, § 1, p. 764.]

## CHAPTER 11

### UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

#### PART 1. GENERAL PROVISIONS

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- 32-11-103. Proceedings governed by other law.
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- 32-11-202. Exclusive, continuing jurisdiction.
- 32-11-203. Jurisdiction to modify determination.
- 32-11-204. Temporary emergency jurisdiction.
- 32-11-205. Notice — Opportunity to be heard — Joinder.
- 32-11-206. Simultaneous proceedings.
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##### SECTION.

- 32-11-209. Information to be submitted to court.

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#### PART 4. MISCELLANEOUS PROVISIONS

- 32-11-401. Application and construction.
- 32-11-402. Severability clause.
- 32-11-403, 32-11-404. [Reserved.]
- 32-11-405. Transitional provision.

## STATUTORY NOTES

**Compiler's Notes.** — The following sections were repealed by S.L. 2000, ch. 227, § 1, effective July 1, 2000:

Former § 32-1101, which comprised I.C.,

§ 5-1001, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1102, which comprised I.C.,

§ 5-1002, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1103, which comprised I.C., § 5-1003, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1104, which comprised I.C., § 5-1004, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1105, which comprised I.C., § 5-1005, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1106, which comprised I.C., § 5-1006, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1107, which comprised I.C., § 5-1007, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1108, which comprised I.C., § 5-1008, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1109, which comprises I.C., § 5-1009, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1110, which comprises I.C., § 5-1010, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1111, which comprised I.C., § 5-1011, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1112, which comprised I.C., § 5-1012, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1113, which comprised I.C., § 5-1013, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1114, which comprised I.C., § 5-1014, as added by 1977, ch. 214, § 1, p.

618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1115, which comprised I.C., § 5-1014A, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1116, which comprised I.C., § 5-1015, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1117, which comprised I.C., § 5-1016, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1118, which comprised I.C., § 5-1017, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1119, which comprised I.C., § 5-1018, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1120, which comprised I.C., § 5-1019, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1121, which comprised I.C., § 5-1020, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1122, which comprised I.C., § 5-1021, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1123, which comprised I.C., § 5-1022, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1124, which comprised I.C., § 5-1023, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1125, which comprised I.C., § 5-1024, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

Former § 32-1126, which comprised I.C., § 5-1025, as added by 1977, ch. 214, § 1, p. 618; am. and redesign. 1982, ch. 311, § 4, p. 776.

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## PART 1. GENERAL PROVISIONS

**32-11-101. Short title.** — This chapter may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act.” [I.C., § 32-11-101, as added by 2000, ch. 227, § 2, p. 623.]

## RESEARCH REFERENCES

**A.L.R.** — Habeas corpus: Child custody provisions of divorce or separation decree as subject to modification on habeas corpus. 4 A.L.R.3d 1277.

Child's wishes as factor and awarding custody. 4 A.L.R.3d 1396.

Power of court which denied divorce, legal separation, or annulment, to award custody or make provisions for support of child. 7 A.L.R.3d 1096.

Divorce: Award of custody of child to parent against whom divorce is decreed. 23 A.L.R.3d 6.

Award of custody of child where contest is between child's father and grandparent. 25 A.L.R.3d 7.

Award of custody of child where contest is between child's mother and grandparent. 29 A.L.R.3d 366.

Award of custody of child where contest is between child's grandparent and one other than the child's parent. 30 A.L.R.3d 290.

Award of custody of child where contest is between child's parents and grandparents. 31 A.L.R.3d 1187.

Necessity of notice of application for temporary custody of child. 31 A.L.R.3d 1378.

Foreign award: Extraterritorial effect of valid award of custody of child of divorced parents, in absence of substantial change in circumstances. 35 A.L.R.3d 520.

Right of putative father to custody of illegitimate child. 45 A.L.R.3d 216.

Physical abuse of child by parent as ground for termination of parent's right to child. 53 A.L.R.3d 605.

Sexual abuse of child by parent as ground for termination of parent's right to child. 58 A.L.R.3d 1074.

Right, in child custody proceedings, to cross-examine investigating officer whose report is used by court in its decision. 59 A.L.R.3d 1337.

Who has custody or control of child within terms of penal statute punishing cruelty or neglect by one having custody or control. 75 A.L.R.3d 933.

Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding. 79 A.L.R.3d 417.

Race as factor in custody award or proceedings. 10 A.L.R.4th 796.

Religion as factor in child custody and visitation cases. 22 A.L.R.4th 971.

Child custody: Separating children by custody awards to different parents — post-1975 cases. 67 A.L.R.4th 354.

What types of proceedings or determinations are governed by the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA). 78 A.L.R.4th 1028.

Significant connection jurisdiction of court under § 3(a)(2) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A(c)(2)(B). 5 A.L.R.5th 550.

Abandonment and emergency jurisdiction of court under § 3(a)(3) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A(c)(2)(C). 5 A.L.R.5th 788.

Home state jurisdiction of court under § 3(a)(1) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A(c)(2)(A). 6 A.L.R.5th 1.

Default jurisdiction of court under § 3(a)(4) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A(c)(2)(D). 6 A.L.R.5th 69.

Construction and operation of Uniform Child Custody Jurisdiction and Enforcement Act. 100 A.L.R.5th 1.

### 32-11-102. Definitions. — In this chapter:

(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained eighteen (18) years of age.

(c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency,



guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under part 3 of this chapter.

(e) "Commencement" means the filing of the first pleading in a proceeding.

(f) "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(l) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who:

(1) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and

(2) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(o) "Physical custody" means the physical care and supervision of a child.

(p) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(q) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(r) "Tribe" means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(s) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child. [I.C., § 32-11-102, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-103. Proceedings governed by other law.** — This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child. [I.C., § 32-11-103, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-104. Application to Indian tribes.** — A child custody proceeding that pertains to an Indian child as defined in the Indian child welfare act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian child welfare act. [I.C., § 32-11-104, as added by 2000, ch. 227, § 2, p. 623.]

#### RESEARCH REFERENCES

**A.L.R.** — Construction and application of Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C.A. §§ 1901 et seq.) upon child custody determinations. 89 A.L.R.5th 195.

**32-11-105. International application of chapter.** — (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying parts 1 and 2 of this chapter.

(b) Except as otherwise provided in subsection (c) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter.

(c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights. [I.C., § 32-11-105, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-106. Effect of child custody determination.** — A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 32-11-108, Idaho Code, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. [I.C., § 32-11-106, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-107. Priority.** — If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously. [I.C., § 32-11-107, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-108. Notice to persons outside state.** — (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by

the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court. [I.C., § 32-11-108, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-109. Appearance and limited immunity.** — (a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state. [I.C., § 32-11-109, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-110. Communication between courts.** — (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [I.C., § 32-11-110, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-111. Taking testimony in another state.** — (a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means



allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission. [I.C., § 32-11-111, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-112. Cooperation between courts — Preservation of records.** — (a) A court of this state may request the appropriate court of another state to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that state;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records. [I.C., § 32-11-112, as added by 2000, ch. 227, § 2, p. 623.]

## PART 2. JURISDICTION

**32-11-201. Initial child custody jurisdiction.** — (a) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state has jurisdiction to make an initial child custody determination only if:

- (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is

absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 32-11-207 or 32-11-208, Idaho Code, and:

(A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 32-11-207 or 32-11-208, Idaho Code; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination. [I.C., § 32-11-201, as added by 2000, ch. 227, § 2, p. 623.]

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### When Applicable.

Where original divorce decree entered by an Idaho court awarded joint custody of child to parties and mother filed motion in Florida court requesting that she be awarded custody and father filed motion in Idaho court requesting custody and Idaho magistrate did not decline jurisdiction, since Idaho had continuing jurisdiction, the Florida court should

have communicated with the Idaho magistrate, determined that the Idaho magistrate was going to exercise Idaho's continuing jurisdiction, and deferred to the decision of the Idaho magistrate pursuant to the mandate of former § 32-114 and Florida law. *Ladurini v. Hazzard*, 130 Idaho 192, 938 P.2d 1230 (1997).

**32-11-202. Exclusive, continuing jurisdiction.** — (a) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state which has made a child custody determination consistent with section 32-11-201 or 32-11-203, Idaho Code, has exclusive, continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 32-11-201, Idaho Code. [I.C., § 32-11-202, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-203. Jurisdiction to modify determination.** — Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 32-11-201(a)(1) or (2), Idaho Code, and:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 32-11-202, Idaho Code, or that a court of this state would be a more convenient forum under section 32-11-207, Idaho Code; or

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state. [I.C., § 32-11-203, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-204. Temporary emergency jurisdiction.** — (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody



proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 32-11-201 through 32-11-203, Idaho Code, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 32-11-201 through 32-11-203, Idaho Code, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. [I.C., § 32-11-204, as added by 2000, ch. 227, § 2, p. 623.]

### RESEARCH REFERENCES

**A.L.R.** — Emergency jurisdiction of court under §§ 3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§ 1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding existence of

prior, valid custody decree rendered by another state. 80 A.L.R.5th 117.

Appealability of interlocutory or pendente lite order for temporary child custody. 82 A.L.R.5th 389.

### **32-11-205. Notice — Opportunity to be heard — Joinder. —**

(a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 32-11-108, Idaho Code, must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state. [I.C., § 32-11-205, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-206. Simultaneous proceedings. —** (a) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state may not exercise its jurisdiction under part 2 of this chapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 32-11-207, Idaho Code.

(b) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 32-11-209, Idaho Code. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state

shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

- (1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;
- (2) Enjoin the parties from continuing with the proceeding for enforcement; or
- (3) Proceed with the modification under conditions it considers appropriate. [I.C., § 32-11-206, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-207. Inconvenient forum.** — (a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this state;
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce

or another proceeding while still retaining jurisdiction over the divorce or other proceeding. [I.C., § 32-11-207, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-208. Jurisdiction declined by reason of conduct. —**

(a) Except as otherwise provided in section 32-11-204, Idaho Code, or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, determines that this state is a more appropriate forum under section 32-11-207, Idaho Code; or

(3) No court of any other state would have jurisdiction under the criteria specified in sections 32-11-201 through 32-11-203, Idaho Code.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than this chapter. [I.C., § 32-11-208, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-209. Information to be submitted to court. —** (a) In a child custody proceeding each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and



(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those person's.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsections (a)(1) through (3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding. [I.C., § 32-11-209, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-210. Appearance of parties and child.** — (a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 32-11-108, Idaho Code, include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child. [I.C., § 32-11-210, as added by 2000, ch. 227, § 2, p. 623.]

### PART 3. ENFORCEMENT

#### **32-11-301. [Reserved.]**

**32-11-302. Enforcement under Hague convention.** — Under this chapter a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child custody determination. [I.C., § 32-11-302, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-303. Duty to enforce.** — (a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the

latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this part 3 are cumulative and do not affect the availability of other remedies to enforce a child custody determination. [I.C., § 32-11-303, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-304. Temporary visitation.** — (a) A court of this state which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:

- (1) A visitation schedule made by a court of another state; or
- (2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in part 2 of this chapter. The order remains in effect until an order is obtained from the other court or the period expires. [I.C., § 32-11-304, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-305. Registration of child custody determination.** — (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the office of the clerk of any district court in this state:

- (1) A letter or other document requesting registration;
- (2) Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) Except as otherwise provided in section 32-11-209, Idaho Code, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

- (1) Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and
  - (2) Serve notice upon the persons named pursuant to subsection (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.
- (c) The notice required by subsection (b)(2) of this section must state that:
- (1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under part 2 of this chapter;

(2) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [I.C., § 32-11-305, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-306. Enforcement of registered determination.** — (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with part 2 of this chapter, a registered child custody determination of a court of another state. [I.C., § 32-11-306, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-307. Simultaneous proceedings.** — If a proceeding for enforcement under part 3 of this chapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under part 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. [I.C., § 32-11-307, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-308. Expedited enforcement of child custody determination.** — (a) A petition under part 3 of this chapter must be verified.



Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

- (1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
  - (2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;
  - (3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
  - (4) The present physical address of the child and the respondent, if known;
  - (5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and
  - (6) If the child custody determination has been registered and confirmed under section 32-11-305, Idaho Code, the date and place of registration.
- (c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.
- (d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 32-11-312, Idaho Code, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:
- (1) The child custody determination has not been registered and confirmed under section 32-11-305, Idaho Code, and that:
    - (A) The issuing court did not have jurisdiction under part 2 of this chapter;
    - (B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter;
    - (C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section 32-11-305, Idaho Code, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter. [I.C., § 32-11-308, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-309. Service of petition and order.** — Except as otherwise provided in section 32-11-311, Idaho Code, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child. [I.C., § 32-11-309, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-310. Hearing and order.** — (a) Unless the court issues a temporary emergency order pursuant to section 32-11-204, Idaho Code, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under section 32-11-305, Idaho Code, and that:

(A) The issuing court did not have jurisdiction under part 2 of this chapter;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section 32-11-305, Idaho Code, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter.

(b) The court shall award the fees, costs and expenses authorized under section 32-11-312, Idaho Code, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under part 3 of this chapter. [I.C., § 32-11-310, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-311. Warrant to take physical custody of child.** — (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer

serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 32-11-308(b), Idaho Code.

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. [I.C., § 32-11-311, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-312. Costs — Fees — Expenses.** — (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter. [I.C., § 32-11-312, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-313. Recognition and enforcement.** — A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter. [I.C., § 32-11-313, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-314. Appeals.** — An appeal may be taken from a final order in a proceeding under this chapter. The court shall make every effort to expedite the appeal. Unless the court enters a temporary emergency order under



section 32-11-204, Idaho Code, the enforcing court may not stay an order enforcing a child custody determination pending appeal. [I.C., § 32-11-314, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-315. Role of county prosecuting attorney.** — (a) In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the county prosecuting attorney may take any lawful action, including resort to a proceeding under this chapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) An existing child custody determination;
- (2) A request to do so from a court in a pending child custody proceeding;
- (3) A reasonable belief that a criminal statute has been violated; or
- (4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

(b) The county prosecuting attorney acting under this section acts on behalf of the court and may not represent any party. [I.C., § 32-11-315, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-316. Role of law enforcement.** — At the request of the county prosecuting attorney acting under section 32-11-315, Idaho Code, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the county prosecuting attorney with responsibilities under section 32-11-315, Idaho Code. [I.C., § 32-11-316, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-317. Costs and expenses.** — If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the county prosecuting attorney and law enforcement officers under section 32-11-315 or 32-11-316, Idaho Code. [I.C., § 32-11-317, as added by 2000, ch. 227, § 2, p. 623.]

#### PART 4. MISCELLANEOUS PROVISIONS

**32-11-401. Application and construction.** — In applying and construing this chapter, otherwise known as the uniform child custody jurisdiction and enforcement act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [I.C., § 32-11-401, as added by 2000, ch. 227, § 2, p. 623.]

**32-11-402. Severability clause.** — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [I.C., § 32-11-402, as added by 2000, ch. 227, § 2, p. 623.]

32-11-403. [Reserved.]

32-11-404. [Reserved.]

**32-11-405. Transitional provision.** — A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this chapter as the uniform child custody jurisdiction and enforcement act is governed by the law in effect at the time the motion or other request was made. [I.C., § 32-11-405, as added by 2000, ch. 227, § 2, p. 623.]

CHAPTER 12

MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT

SECTION.	SECTION.
32-1201. Statement of legislative intent.	32-1213. Order for payment of medical expenses.
32-1202. Definitions.	32-1214. [Repealed.]
32-1203. Remedies in addition to other remedies.	32-1214A. Purpose.
32-1204. Notice of immediate income withholding.	32-1214B. Definitions.
32-1205. Income withholding upon a delinquency.	32-1214C. Medical support order.
32-1206. Judicial proceedings for income withholding.	32-1214D. Exceptions to requirement for immediate enrollment.
32-1207. Administrative proceedings for income withholding.	32-1214E. Prohibition on denial of enrollment.
32-1208. Service of income withholding order in a judicial proceeding.	32-1214F. Notice of medical support order.
32-1209. Service of income withholding order in an administrative proceeding.	32-1214G. Authority of the department.
32-1210. Employer's duties and responsibilities — Fee for employer.	32-1214H. Notice of intent to enforce.
32-1211. Penalties for employers.	32-1214I. Disenrollment.
32-1212. Identifying information — Filing with tribunal and child support services.	32-1214J. Notice of termination of coverage.
	32-1215. Termination of income withholding upon obligor's request.
	32-1216. Termination or modification of income withholding upon obligee's request.
	32-1217. Termination of income withholding by the court in a judicial proceeding.

**32-1201. Statement of legislative intent.** — The legislature of the state of Idaho finds that a significant number of people who are owed child support are not paid in accordance with the terms of their child support orders; and that income withholding is an effective remedy to insure compliance with child support orders. The following legislation is enacted to ensure that all child support orders will include in them the authority necessary to permit wage withholding. The legislation also includes provisions for the establishment of a support order to insure that all dependent children are adequately supported, regardless of the past or current marital status of the parents. This chapter shall be liberally construed to assure that all dependent children are adequately supported. [I.C., § 32-1201, as added by 1986, ch. 222, § 1, p. 593.]

## RESEARCH REFERENCES

**Am. Jur.** — 24A Am.Jur.2d, Divorce and Separation, § 1055.

**32-1202. Definitions.** — Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) “Business day” means a day on which state offices are open for regular business.

(2) “Child support services” means support enforcement or collection and disbursement services.

(3) “Current support” means the present month’s required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(4) “Delinquency” means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.

(5) “Department” means the department of health and welfare.

(6) “Dependent child” means any child for whom a support order has been established or for whom a duty of support is owed.

(7) “Disposable earnings” means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(8) “Duty of support” means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(9) “Earnings” means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(10) “Employer” includes the United States government, a state or local unit of government, and any person or entity who pays or owes income to the obligor.

(11) “Income” means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Unemployment compensation payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;



(b) Worker's compensation payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Public assistance payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(12) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(13) "Obligor" means any person obligated by order to pay child or spousal support.

(14) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(15) "Support order" means a judgment, decree, or order issued by a magistrate or district court of the state of Idaho creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction in another state or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable in this state. [I.C., § 32-1202, as added by 1986, ch. 222, § 1, p. 593; am. 1993, ch. 335, § 1, p. 1244; am. 1994, ch. 308, § 4, p. 963; am. 1998, ch. 292, § 7, p. 928.]

#### STATUTORY NOTES

**Effective Dates.** — Section 15 of S.L. 1993, ch. 335, as amended by S.L. 1994, ch. 308, § 10, read: "The provisions of Sections 1 through 7 of this act shall be in full force and effect on and after July 1, 1993."

**32-1203. Remedies in addition to other remedies.** — (1) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(2) The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents. [I.C., § 32-1203, as added by 1986, ch. 222, § 1, p. 593.]

**32-1204. Notice of immediate income withholding.** — (1) The court shall order income withholding in all support orders effective the date of the order unless an exception is granted by the court pursuant to subsection (2) of this section. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

(2) Immediate income withholding shall not be ordered if:

(a) One (1) of the parties demonstrates and the court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

- (i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and
- (ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or
- (b) A written agreement is reached between the obligor and obligee and the department in cases where the department is providing child support services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.
- (3) Failure to provide for income withholding does not affect the validity of the support order. [I.C., § 32-1205, as added by 1986, ch. 222, § 1, p. 593; am. 1990, ch. 361, § 1, p. 973; am. 1993, ch. 335, § 2, p. 1244; am. and redesign. 1998, ch. 292, § 8, p. 928.]

#### STATUTORY NOTES

**Prior Laws.** — This section was formerly compiled as § 32-1205.

A former § 32-1204, which comprised I.C., § 32-1204, as added by 1986, ch. 222, § 1, p. 593, was repealed by S.L. 1998, ch. 292, § 1.

**Effective Dates.** — Section 15 of S.L. 1993, ch. 335, as amended by S.L. 1994, ch. 308, § 10, read: "The provisions of Sections 1 through 7 of this act shall be in full force and effect on and after July 1, 1993."

#### JUDICIAL DECISIONS

##### **Construction with Other Statutes.**

Where a district court judge incorrectly interpreted § 5-245 to include a complaint for renewal of judgment for past child support arrearages as an action or proceeding to collect past child support obligations, an attempt at execution of a judgment after the children

reached their twenty-third birthdays was not within the statute of limitations. *Thomas v. Worthington*, 132 Idaho 825, 979 P.2d 1183 (1999).

**Cited in:** *State v. Smith*, 136 Idaho 775, 40 P.3d 133 (Ct. App. 2001).

**32-1205. Income withholding upon a delinquency.** — If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing. [I.C., § 32-1205, as added by 1998, ch. 292, § 9, p. 928.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-1205 was amended and redesignated as § 32-1204 by § 8 of S.L. 1998, ch. 292.

**32-1206. Judicial proceedings for income withholding.** — (1) A proceeding to enforce a duty of support is commenced:

- (a) By filing a petition or complaint for an original action; or
- (b) By motion in an existing action or under an existing case number.

(2) Venue for the action is in the district court of the county where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child.

(3) A filing fee shall not be assessed in cases brought on behalf of the state of Idaho.

(4) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to section 32-1204 or 32-1205, Idaho Code, and:

- (a) The name, address, and social security number of the obligor;
- (b) A copy of the support order;
- (c) The name and address of the obligor's employer;
- (d) The amount of any delinquency; and
- (e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(5) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to section 32-1204 or 32-1205, Idaho Code, to the employer and shall provide a form for an answer to the income withholding order which shall be returned to the court within ten (10) days. The court shall also order the employer to remit the amount withheld to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the obligor. The department shall supply each county with forms for income withholding orders and answers that comply with the rules promulgated by the department, and which include:

- (a) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement; and
- (b) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any;
- (c) The amount of arrearage payments specified in the support order, if any.

(6) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the department.

(7) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable. [I.C., § 32-1206, as added by 1986, ch. 222, § 1, p. 593; am. 1993, ch. 335, § 3, p. 1244; am. 1998, ch. 292, § 10, p. 928.]

#### STATUTORY NOTES

**Effective Dates.** — Section 15 of S.L. 1993, ch. 335, as amended by S.L. 1994, ch. 308, § 10, read: "The provisions of Sections 1

through 7 of this act shall be in full force and effect on and after July 1, 1993."

#### JUDICIAL DECISIONS

**Cited in:** State v. Smith, 136 Idaho 775, 40 P.3d 133 (Ct. App. 2001).



**32-1207. Administrative proceedings for income withholding. —**

Upon application by any obligee or obligor, the department may order income withholding pursuant to this chapter for payment of current support, any delinquency, and costs or fees pursuant to a support order as follows:

(1) If the support order provides for immediate income withholding pursuant to section 32-1204, Idaho Code, the department shall commence income withholding.

(2) If the support order does not provide for immediate income withholding, the department shall commence income withholding upon a delinquency, and shall also notify the obligor:

(a) Of the amount of the delinquency owed and the amount of income withheld;

(b) That the provision applies to all subsequent employers;

(c) Of the right to request an administrative review; and

(d) That the review is limited to mistakes of fact, which means an error in the amount of current support or delinquency, or the identity of the alleged obligor, and that no issues may be considered that have been litigated previously. If the obligor requests an administrative review within fourteen (14) days from the day the notice was mailed, the collection of arrears by income withholding shall be stayed. The department shall review the income withholding order within thirty-five (35) days, issue a decision and amend or void the income withholding order, if necessary. Any amounts which are found to have been withheld in error due to a mistake of fact will be returned to the obligor or credited towards the obligor's future payments. [I.C., § 32-1207, as added by 1998, ch. 292, § 11, p. 928.]

**STATUTORY NOTES**

**Prior Laws.** — A former § 32-1207, which ch. 222, § 1, p. 593; am. 1993, ch. 335, § 4, p. comprised I.C., § 32-1207, as added by 1986, 1244, was repealed by S.L. 1998, ch. 292, § 1.

**JUDICIAL DECISIONS**

**Cited in:** State v. Smith, 136 Idaho 775, 40 P.3d 133 (Ct. App. 2001).

**32-1208. Service of income withholding order in a judicial proceeding. —** (1) The following items and documents shall be served on the employer personally or by any form of mail requiring a return receipt:

(a) Two (2) conformed copies of the income withholding order, one (1) of which is for the employer, and one (1) for the obligor;

(b) Four (4) answer forms in substantial compliance with section 32-1210, Idaho Code;

(c) Three (3) stamped envelopes provided by the obligee and addressed to, respectively, the person or entity designated in the income withholding order, the obligee's attorney or the obligee, and the obligor.

(2) On or before the date of service of the income withholding order on the employer, the obligee shall mail or cause to be mailed by certified mail a copy

of the income withholding order to the obligor at the obligor's last known post-office address. [I.C., § 32-1212, as added by 1986, ch. 222, § 1, p. 593; am. and redesign. 1998, ch. 292, § 12, p. 928.]

STATUTORY NOTES

**Compiler's Notes.** — This section was comprised I.C., § 32-1208, as added by 1986, formerly compiled as § 32-1212. ch. 222, § 1, p. 593, am. 1994, ch. 308, § 5, p. 963 was repealed by S.L. 1998, ch. 292, § 1.

**32-1209. Service of income withholding order in an administrative proceeding.** — (1) The department shall send the income withholding order to the employer by certified mail.

(2) At the same time the withholding order is mailed to the employer, the department shall mail a copy of the income withholding order to the obligor at the obligor's last known post-office address. [I.C., § 32-1209, as added by 1998, ch. 292, § 13, p. 928.]

STATUTORY NOTES

**Prior Laws.** — Former § 32-1209, which comprised I.C., § 32-1209, as added by 1986, ch. 222, § 1, p. 593; am. 1993, ch. 335, § 5, p. 1244; am. 1994, ch. 308, § 6, p. 963, was repealed by S.L. 1998, ch. 292, § 1.

**32-1210. Employer's duties and responsibilities — Fee for employer.** — (1) Upon receiving an income withholding order from the court, the employer shall answer the income withholding order on forms supplied with the income withholding order within ten (10) days after the date of service. The employer shall deliver the original answer to the court, and shall mail one (1) copy to the obligee or obligee's attorney, and shall deliver one (1) copy to the obligor as soon as is reasonably possible. The answer shall state whether the obligor is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the obligor. Upon receiving an income withholding order from the department, the employer shall begin income withholding pursuant to this section.

(2) If the employer possesses any income due and owing to the obligor, the income subject to the income withholding order shall be withheld immediately upon receipt of the income withholding order. The withheld income shall be delivered to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the employee.

(3) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed fifty percent (50%) of the disposable earnings of the obligor. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent (50%) of the disposable earnings of the obligor, whichever is less. In no event shall the

amount to be withheld from the earnings of the obligor exceed the amount specified in section 11-207, Idaho Code.

(4) When an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (a) The employer's fee for processing an income withholding order;
- (b) The maximum amount permitted to be withheld from the obligor's income;
- (c) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (d) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (e) Any withholding terms or conditions not specified in the income withholding order.

(5) If an obligor is subject to two (2) or more income withholding orders for child support on behalf of more than one (1) obligee, the employer may send the entire amount withheld from that obligor to the clerk of the court or, if the department is providing child support services on behalf of either obligee, to the department. If the department is providing child support services, the employer shall send the department a copy of each income withholding order under which the obligor owes a support obligation. The clerk of the court or the department shall apportion the amount of income withheld between all obligees of the obligor as follows: the support obligation for the current month shall be paid first. If the amount of nonexempt disposable income withheld is not sufficient to pay the total support obligation for the current month for each obligee for whom there is an income withholding order, the amount withheld shall be divided between each obligee for whom there is an income withholding order on a pro rata basis. If the amount of the nonexempt disposable earnings withheld is in excess of the total support obligation for the current month for each obligee for whom there is an income withholding order, the excess shall be divided between each obligee for whom there is an income withholding order which includes withholding for any delinquency on a pro rata basis unless otherwise ordered by a court.

(6) The employer shall continue to withhold the ordered amounts from nonexempt income of the obligor until notified by the court or the department that the income withholding order has been modified or terminated. The employer shall promptly notify the court or the department when the employee is no longer employed, and of the employee's last known address, and the name and address of his new employer, if known.

(7) The employer may deduct a processing fee, not to exceed five dollars (\$5.00), to cover the costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount withheld to satisfy the withholding order, but the total amount withheld, including the fee, shall not exceed fifty percent (50%) of the obligor's disposable income.

(8) The employer may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.



(9) An order for income withholding for support entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment, income withholding order, or garnishment for child support. [I.C., § 32-1210, as added by 1986, ch. 222, § 1, p. 593; am. 1995, ch. 201, § 2, p. 693; am. 1998, ch. 292, § 14, p. 928.]

**32-1211. Penalties for employers.** — (1) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this chapter. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the obligor shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and other damages suffered as a result of the violation and for costs and reasonable attorney's fees, and may be subject to a civil penalty of up to three hundred dollars (\$300) for each violation. In addition, the employer may also be ordered to hire, rehire, or reinstate the aggrieved obligor.

(2) An employer who knowingly fails to retain and remit to the department an amount pursuant to the income withholding order shall be liable to the department for the amount to be retained specified in the income withholding order and may be subject to a fine of up to one hundred dollars (\$100), which is a debt due and owing to the department unless:

(a) The employer notifies the department that the obligor is not in his employ and the department verifies the obligor's nonemployment and withdraws its income withholding order; or

(b) The obligor's income is not sufficient and therefore the restrictions in section 11-207, Idaho Code, apply and a lesser amount must be withheld.

(3) No employer who complies with an income withholding order that is regular on its face shall be subject to civil liability to any individual or agency for conduct in compliance with the income withholding order. [I.C., § 32-1211, as added by 1998, ch. 292, § 15, p. 928.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-1211, which ch. 222, § 1, p. 593, was repealed by S.L. comprised I.C., § 32-1211, as added by 1986, 1998, ch. 292, § 1.

**32-1212. Identifying information — Filing with tribunal and child support services.** — Obligor and obligee shall file with the court or the department, if the department is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of their employer. Obligor and obligee shall provide written notification of any changes within thirty (30) days after such change. [I.C., § 32-1212, as added by 1998, ch. 292, § 16, p. 928.]

#### STATUTORY NOTES

**Compiler's Notes.** — Former § 32-1212 was amended and redesignated as § 32-1208 by § 12 of S.L. 1998, ch. 292.

**32-1213. Order for payment of medical expenses.** — (1) A proceeding to enforce a support order directing the payment of medical expenses of a dependent child may be commenced as provided in section 32-1206, Idaho Code.

(2) The petition or motion may be filed by an obligee when medical expenses not otherwise covered by insurance have been incurred in the amount of one hundred dollars (\$100) or more, or when insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is claimed to be due from the obligor equal or exceed one hundred dollars (\$100). The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the order, including:

- (a) An itemization of the medical expenses, including a specific reference to any insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is sought from the obligor;
- (b) Whether such expenses have been submitted to any applicable insurance carrier or other third party payer and the results of such submission;
- (c) That the obligor, stating his or her name, residence and social security number has failed or refused to pay the medical expenses or to reimburse the obligee therefor;
- (d) A description of the terms of the support order requiring payment of the medical expenses claimed to be due.

(3) Upon the filing of a petition or motion and affidavit containing the information required in subsection (2) of this section, the clerk of the court shall set a hearing thereon. The obligee shall serve a copy of the petition or motion, accompanying affidavit and notice of hearing on the obligor at least ten (10) days before the date set for hearing, by personal service or certified mail, pursuant to the Idaho rules of civil procedure.

(4) After hearing, the court shall enter its order directing payment of the specific sums, if any, for which the obligor is found to be liable for previously incurred medical expenses. In addition, if the court determines that some or all of the medical expenses of the dependent child are of an ongoing or recurring nature and the anticipated amounts thereof are capable of determination to the satisfaction of the court, the court may order payment to the obligee of a specific sum per month toward such expenses.

(5) For purposes of this section “medical expenses” means any and all costs and expenses related to the health care of a dependent child, including insurance premiums and any deductible amounts, all or a portion of which are ordered to be paid by the obligor in addition to any amount awarded as child support, pursuant to a support order. [I.C., § 32-1215, as added by 1992, ch. 265, § 1, p. 820; am. and redesign. 1998, ch. 292, § 17, p. 928.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-1213, which comprised I.C., § 32-1213, as added by 1986, ch. 222, § 1, p. 593, was repealed by S.L. 1998, ch. 292, § 1.

**Compiler’s Notes.** — This section was formerly compiled as § 32-1215.

**32-1214. Health insurance coverage — Enforcement. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** — This section, which comprised (I.C., § 32-1216, as added by 1993, ch. 337, § 1, p. 1266; am. 1994, ch. 365, § 1, p. 1144; am. 1996, ch. 53, § 1, p. 158; am. and redesiɡ. 1998, ch. 292, § 18, p. 928), was repealed by S.L. 2003, ch. 304, § 1.

**32-1214A. Purpose.** — The state of Idaho has an interest in ensuring that its children receive health insurance benefits through private means when available. Therefore, the legislature hereby adopts the national medical support notice required by 42 U.S.C. section 666(a)(19) and the employee retirement income security act, 29 U.S.C. section 1169(a), to allow the department of health and welfare or an obligee to enforce an order for medical support. [I.C., § 32-1214A, as added by 2003, ch. 304, § 2, p. 833.]

**32-1214B. Definitions.** — For the purposes of this chapter, the following definitions apply:

(1) "Child" means any child including an adopted minor child, of a participant in a health benefit plan, recognized under a medical child support order as having a right to enrollment under a health benefit plan.

(2) "Department" means the department of health and welfare.

(3) "Health benefit plan" means a group or individual health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child.

(4) "Insurer" means every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or annuity.

(5) "Medical child support order" means any order, including those that meet the requirements of 29 U.S.C. section 1169, or notice issued by either a court or administrative agency that requires a plan administrator, or if none, the employer, to enroll an eligible child in a health benefit plan.

(6) "Obligee" means a party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child.

(7) "Obligor" means the parent ordered by the court to carry or provide health insurance benefits for the parties' minor child.

(8) "Party" means the department, grandparent or any person who is the custodian, other than the parent who owes a duty of medical support.

(9) "Plan administrator" means a person or entity, designated under the terms of the health benefit plan or health insurance policy or related contract or agreement, responsible for the administration of plan duties. If no plan administrator is designated under the terms of the policy, contract or agreement, the plan administrator is the plan sponsor.

(10) "Plan sponsor" means an employer, employee organization, association, committee, joint board of trustees, or other similar group, including a state or local government agency or church, that establishes or maintains an employee benefit plan. [I.C., § 32-1214B, as added by 2003, ch. 304, § 3, p. 833; am. 2005, ch. 101, § 1, p. 320.]

**32-1214C. Medical support order.** — (1) A medical support notice issued to an employer or plan administrator is a qualified medical support



order as defined by 29 U.S.C. section 1169(a) through (c).

(2) Upon receipt of a national medical support notice, if the employer has one (1) health benefit plan, the employer shall respond within twenty (20) business days and confirm that the child will be enrolled or explain that one (1) of the conditions identified in section 32-1214D, Idaho Code, exists. The employer shall provide the national medical support notice to the plan administrator within twenty (20) business days.

(3) Upon receipt of a national medical support notice from an employer, the plan administrator shall notify the department or other obligee within forty (40) business days that a health benefit plan will become available for the child, or explain that one (1) of the conditions identified in section 32-1214D, Idaho Code, exists. The plan administrator shall also notify the department or other obligee of any additional steps that need to be taken to complete enrollment. The plan administrator shall notify the department or other obligee when the notice has not been properly filled out, listing the specific deficiencies.

(4) If more than one (1) plan is available, the child shall be enrolled in the obligor's plan. If the obligor has not chosen a health benefit plan, the plan administrator or employer shall provide plan descriptions to the department or other obligee within twenty (20) business days. If the department is enforcing the medical support order, the department shall notify the other obligee of the opportunity to choose the health benefit plan within twenty (20) business days. If for any reason the other obligee does not or is not available to choose, the department shall choose the least expensive health benefit plan available to the obligor.

(5) The employer shall withhold any required premium from the obligor's income or wages. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 11-207, Idaho Code. The employer shall forward the premium withheld to the insurer. If the amount of income taken for child support along with the amount taken for medical support exceeds the amount specified in section 11-207, Idaho Code, child support shall be paid first.

(6) The plan administrator or employer shall provide the department or other obligee with the name of the insurer, the extent of coverage available and other necessary information, and shall make available any necessary claim forms or enrollment membership cards.

(7) An insurer shall not impose requirements on a state agency, which has been assigned the rights of an individual who is eligible for medical assistance, that are different than the requirements that apply to an agent or assignee of any other covered individual.

(8) A child covered by a qualified medical child support order, or the child's custodial parent, legal guardian, or the provider of services to the child, or a state agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

(9) An insurer shall not consider the availability or eligibility for medical assistance under medicaid, 42 U.S.C. section 1396a., in this or any other state when considering eligibility for health benefits or making payments

under its plan. To the extent that payment has been made by medicaid, the department is subrogated to the rights of the individual to payment by any other third party for covered health care items or services. [I.C., § 32-1214C, as added by 2003, ch. 304, § 4, p. 833.]

**32-1214D. Exceptions to requirement for immediate enrollment.**

— The plan administrator or employer shall enroll the child unless the employer or insurer does not offer insurance, the obligor would not qualify for any plan, or the obligor has separated from employment. If insurance is not available because a probationary period exceeds ninety (90) days, the plan administrator or employer shall return the notice to the employer and the department without enrolling the child. If insurance is not available during a probationary period that is ninety (90) days or less, or if ninety (90) days or less remains from a longer waiting period, the plan administrator shall process the enrollment, and notify the employer, the department or other obligee, of the effective date of coverage. [I.C., § 32-1214D, as added by 2003, ch. 304, § 5, p. 833.]

**32-1214E. Prohibition on denial of enrollment.** — A child shall not be denied enrollment in a health benefit plan because:

- (1) The child was born out of wedlock;
- (2) The child is not claimed as a dependent on the obligor's federal income tax return;
- (3) The child does not reside with the obligor or in the insurer's service area; or
- (4) There is no current enrollment season. [I.C., § 32-1214E, as added by 2003, ch. 304, § 6, p. 833.]

**32-1214F. Notice of medical support order.** — Any support order or decree that requires a child to be covered by a health benefit plan issued after July 1, 2003, shall include a statement in substantially the following form:

“Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.”.

[I.C., § 32-1214F, as added by 2003, ch. 304, § 7, p. 833.]

**32-1214G. Authority of the department.** — The department of health and welfare shall have the authority to promulgate rules necessary to implement and enforce orders for medical insurance. The rules shall provide the obligor an opportunity to protest the issuance of the national medical support notice based on mistake of fact. [I.C., § 32-1214G, as added by 2003, ch. 304, § 8, p. 833.]

**32-1214H. Notice of intent to enforce.** — If the order for health benefits fails to provide for direct enforcement, the department or other obligee may serve a written notice of intent to enforce the order on the obligor by mail or personal service. If the obligor fails to provide written proof that health benefits have been obtained or applied for within twenty (20) business days of service of the notice, or within twenty (20) business days of health benefits becoming available, the department or other obligee may proceed to enforce the order directly by sending the notice prescribed by section 32-1214C, Idaho Code. [I.C., § 32-1214H, as added by 2003, ch. 304, § 9, p. 833.]

**32-1214I. Disenrollment.** — The plan administrator or employer shall not disenroll or eliminate health benefits of any such child unless:

(1) A certified copy of an order terminating the obligation to provide health benefits is provided to a plan administrator or employer;

(2) Confirmation has been received by the plan administrator or employer that the child is enrolled in another comparable health benefit plan;

(3) The employer has eliminated family health benefit plans for all of its employees;

(4) The obligor has separated from employment;

(5) The child is no longer eligible for coverage under the terms of the plan;  
or

(6) The required premium has not been paid by or on behalf of the child.  
[I.C., § 32-1214I, as added by 2003, ch. 304, § 10, p. 833.]

**32-1214J. Notice of termination of coverage.** — The plan administrator or employer shall notify the department or other obligee within twenty (20) days when health benefits are no longer available and state the reason why. [I.C., § 32-1214J, as added by 2003, ch. 304, § 11, p. 833.]

**32-1215. Termination of income withholding upon obligor's request.** — (1) An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee at least five (5) days before the date set for the hearing, by personal service or certified mail, pursuant to the Idaho rules of civil procedure.

(2) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(3) If an income withholding order has been in operation for twelve (12) consecutive months and the obligor's support obligation is current, the court may terminate the order upon motion of the obligor, unless the obligee can



show good cause as to why the income withholding order should remain in effect.

(4) No order to quash, modify, or terminate an income withholding order shall be issued unless the obligor provides proof to the court that the obligee has been served with a copy of the motion and notice for hearing five (5) days prior to the hearing, or that service is impossible because the obligee has moved and failed to provide the court with a current address, as required by section 32-1212, Idaho Code. [I.C., § 32-1215, as added by 1998, ch. 292, § 19, p. 928.]

#### STATUTORY NOTES

**Compiler's Notes.** — Former § 32-1215 was amended and redesignated as § 32-1213 by § 17 of S.L. 1998, ch. 292.

**32-1216. Termination or modification of income withholding upon obligee's request.** — The court may quash, modify or terminate an income withholding order upon written request therefor by the obligee, unless the court finds that the termination would not be in the best interests of the dependent child. [I.C., § 32-1216, as added by 1998, ch. 292, § 20, p. 928.]

#### STATUTORY NOTES

**Compiler's Notes.** — Former § 32-1216 was amended and redesignated as § 32-1214 by § 18 of S.L. 1998, ch. 292.

**32-1217. Termination of income withholding by the court in a judicial proceeding.** — If the clerk is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the obligor. [I.C., § 32-1217, as added by 1998, ch. 292, § 21, p. 928.]

#### STATUTORY NOTES

**Prior Laws.** — Former § 32-1217, which 1994, ch. 308, § 7, p. 963, was repealed by comprised § I.C., § 32-1217, as added by S.L. 1998, ch. 292, § 1.

### CHAPTER 13

#### PARENT RESPONSIBILITY ACT

##### SECTION.

32-1301. Cities and counties may enact and enforce ordinances for failure to supervise a child.

**32-1301. Cities and counties may enact and enforce ordinances for failure to supervise a child.** — (1) Any county or city may by ordinance establish and enforce the offense of failure to supervise a child as provided in this section.

(2) The ordinance may provide that a person who is the parent, lawful guardian or other person, except a foster parent, lawfully charged with the care or custody of a child under sixteen (16) years of age commits the offense of failure to supervise a child if the child:

(a) Commits an act bringing the child within the purview of the juvenile corrections act, chapter 5, title 20, Idaho Code, or commits a crime for which the child is required to be tried as an adult, or for which jurisdiction under the juvenile corrections act is subject to waiver pursuant to chapter 5, title 20, Idaho Code; or

(b) Fails to attend school or is not comparably instructed, as provided in section 33-202, Idaho Code; or

(c) Violates a curfew law of the county or city enacting the ordinance authorized under this section.

(3)(a) A person shall not be subject to prosecution under an ordinance containing the provisions of subsection (2)(a) of this section if the person:

(i) Is the victim of the act bringing the child within the purview of the provisions of chapter 5, title 20, Idaho Code; or

(ii) Reported the act of the child to the local law enforcement agency, the juvenile court, the department of health and welfare or other appropriate authority as provided in the ordinance;

(b) A person shall not be subject to prosecution under an ordinance containing the provisions of subsection (2)(a), (b) or (c) of this section if the person shows to the satisfaction of the court that the person took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.

(4) Except as provided in subsection (5) of this section, the ordinance may provide that in a prosecution for failure to supervise a child the court may order the person to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code, provided that the restitution ordered to be paid shall not exceed twenty-five hundred dollars (\$2,500).

(5) The ordinance may provide that when a child commits any of the acts set forth in subsection (2) of this section, the parent, lawful guardian or other person lawfully charged with the care or custody of the child may be charged, by citation or summons, with the offense of failure to supervise a child, unless the person with lawful custody is a foster parent. Upon a first offense, the officer may serve a copy of the ordinance upon the parent, lawful guardian or other person, other than a foster parent, as a warning of the penalties. This service shall be documented by the officer.

(6) An ordinance enacted pursuant to this section shall provide that if a person is found guilty or pleads guilty to the offense of failure to supervise a child, the person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000). The ordinance may

provide that, in lieu of imposing a fine, the court, with the consent of the person, may order the person to complete parenting classes or undertake other treatment or counseling, as approved by the court, and upon the person's completion of the classes, treatment or counseling to the satisfaction of the court, the court may discharge the person or if the person fails to complete the program to the satisfaction of the court, the court may impose the penalty provided in this section. The ordinance may provide that any person violating the orders of the court entered under the ordinance shall be subject to contempt proceedings in accordance with chapter 6, title 7, Idaho Code, in addition to any other penalties authorized pursuant to this section.

(7) The ordinance may provide that the juvenile court has jurisdiction over a first offense of failing to supervise a child and that any subsequent offense shall be subject to the jurisdiction of the magistrate's division of the district court, or may provide that any offense of failing to supervise the child shall be subject to the jurisdiction of the juvenile court or to the jurisdiction of the magistrate's division of the district court.

(8) Conviction of a person under an ordinance enacted under the authority of this section shall not preclude any other action or proceedings against the person which may be undertaken pursuant to the provisions of chapter 5, title 20, Idaho Code, or other provisions of law. [I.C., § 32-1301, as added by 1996, ch. 359, § 1, p. 1207; am. 1997, ch. 264, § 1, p. 753.]

CHAPTER 14

COORDINATED FAMILY SERVICES

SECTION.	SECTION.
32-1401. Legislative findings.	32-1405. Administration of funding.
32-1402. Declaration of purpose.	32-1406. Court assistance offices and coordinated family services — Cost recovery fee schedule.
32-1403. Implementation of a coordinated family services plan.	
32-1404. Evaluation of family court services plan.	

**32-1401. Legislative findings.** — The legislature finds that there is an increasing incidence of children and family members in more than one (1) court proceeding, including juvenile corrections, domestic violence, domestic relations, adoptions, and child protection actions, and there is a need to coordinate these diverse cases and related family services to provide an effective response to the needs of these children and families. [I.C., § 32-1401, as added by 2001, ch. 338, § 1, p. 1199.]

**32-1402. Declaration of purpose.** — The legislature declares that an effective response to address the needs of families and children in resolving these disputes would include the following:

(1) Case management practices that provide a flexible response to the diverse court-related needs of families involved in multiple court cases which will promote the efficient use of time and resources of the parties and the court, and avoid conflicting court orders;



(2) The expansion of available nonadversarial methods of dispute resolution, including mediation of child custody and visitation disputes and alternative dispute resolution assessments;

(3) Coordination of family dispute issues with related litigation involving the juvenile correction laws and criminal laws;

(4) A family court services coordinator to assist families in need to connect with appropriate resources for the family, to provide assessment information to the court to assist in early case resolution, and to conduct workshops which will educate the parties on the adverse impact of high conflict family disputes upon children, identify the developmental needs of children, and emphasize the importance of parenting plans and mediation techniques which peacefully resolve child custody and visitation issues;

(5) A court assistance officer to provide assistance to parties without legal representation to help them understand the legal requirements of the court system, including educational materials, court forms, assistance in completing court forms, information about court procedures, and referrals to public and community agencies and resources that provide legal and other services to parents and children;

(6) Supervised visitation by trained providers to assure the safety and welfare of children in cases where certain risk factors are identified; and

(7) The adoption of other methods and procedures which will promote a timely and effective resolution of related disputes in court cases involving children and families. [I.C., § 32-1402, as added by 2001, ch. 338, § 1, p. 1199.]

**32-1403. Implementation of a coordinated family services plan.**

— The supreme court may establish a committee consisting of representatives of the judicial, executive and legislative branches to implement a coordinated family court services plan for a comprehensive response to children and families in the courts. The committee shall recommend, for adoption by the supreme court, policies and procedures that will carry out the purposes of this chapter. [I.C., § 32-1403, as added by 2001, ch. 338, § 1, p. 1199.]

**32-1404. Evaluation of family court services plan.** — The supreme court shall conduct a study measuring the effectiveness of an appropriation for family court services and report the results of its study to the governor and to the legislature by the first day of the legislative session. [I.C., § 32-1404, as added by 2001, ch. 338, § 1, p. 1199.]

**32-1405. Administration of funding.** — Subject to the appropriation power of the legislature, the supreme court shall be responsible for administering, allocating and apportioning all funding resources for children and family court services, including grants, contributions, and appropriations from the legislature, to each judicial district upon their submission of an appropriate plan for family court services. [I.C., § 32-1405, as added by 2001, ch. 338, § 1, p. 1199.]

**32-1406. Court assistance offices and coordinated family services — Cost recovery fee schedule.** — (1) The supreme court is hereby

authorized to establish a statewide uniform schedule of fees to assist counties in defraying the costs of providing legal forms and other written materials, training on the use of forms and distributed materials, and other court services that are furnished in connection with court assistance offices and coordinated family services. The supreme court schedule of fees shall be reasonably related to and shall not exceed the actual costs involved in furnishing the materials, training or other services.

(2) The supreme court shall provide for a waiver or partial waiver of fees for those persons who are unable to pay the fees.

(3) The fees established in the supreme court schedule shall be collected through the clerk of the district court of the county in which the materials, training, or other services are furnished, and the clerk shall pay them over to the county treasurer for deposit into the county district court fund. Subject to the budgetary process of the county, the moneys so deposited into the district court fund shall be dedicated to the objects and purposes identified in this section. [I.C., § 32-1406, as added by 2004, ch. 322, § 1, p. 905.]

CHAPTER 15

[RESERVED]

CHAPTER 16

FINANCIAL INSTITUTION DATA MATCH PROCESS

SECTION.	SECTION.
32-1601. Child support enforcement — Financial institution data match process. *	32-1607. Notice.
32-1602. Definitions.	32-1608. Duties of the financial institution.
32-1603. Withholding of assets — Grounds and issuance.	32-1609. No request for hearing.
32-1604. Content of asset withholding order.	32-1610. Hearing to contest asset withholding.
32-1605. Receipt and acceptance of asset withholding order.	32-1611. Basis to contest the asset withholding order.
32-1606. Delivery of an asset withholding order and acceptance of jurisdiction.	32-1612. Order from hearing.
	32-1613. Default.
	32-1614. Liability of financial institution.

**32-1601. Child support enforcement — Financial institution data match process.** — (1) This chapter is enacted to bring the state into compliance with the requirements of P.L. 104-193, sec. 372, and title IV-D of the social security act and to make the financial institution data match process an effective enforcement tool for use in enforcing past due child support and spousal support.

- (2) The department shall:
- (a) Establish and maintain a financial institution data match process with financial institutions in compliance with 42 U.S.C. section 666(a)(17);
  - (b) Define the type of information in the hands of financial institutions pursuant to the agreements with financial institutions which, if available

to the department, would improve the effectiveness of child support collection;

(c) Limit authority to engage the matching process and access to all information received to specialized staff in the department and develop written protocol within the department for the foregoing;

(d) Limit data matching by the department to those obligors who are in arrears in an amount equal to or greater than the total support owing for at least ninety (90) days, or two thousand dollars (\$2,000), whichever is less;

(e) Provide for statistical verification of the improvement to child support enforcement in this state which results from use of the data match process with the financial institutions;

(f) Design the data match process identified herein in such a manner that it will be the least intrusive, least expensive and most confidential process reasonably possible;

(g) Develop a satisfactory contract term to protect the contracting entities from legal liability for disclosure of information as authorized by statute and to protect the public's right of action for wrongful disclosure;

(h) Enter into agreements with financial institutions, and pay reasonable compensation, not to exceed actual costs incurred by the financial institutions in developing the data match process and conducting the data match.

(3) Terms of an agreement between the department and a financial institution shall require the financial institution to provide to the department: the name and address of each obligor identified in the matching process, the account number(s) or other means of identifying the asset, the amount and type of asset, the state in which the asset is located, and other information necessary for compliance with federal requirements.

(4) Assets identified under this section may be withheld, attached or garnished as provided by this chapter and otherwise as allowed by law.

(5) The assets which are subject to this section, regardless of location in this or other states, are those on deposit with or held by a financial institution.

(6) Assets in accounts with the obligor as sole owner or with the obligor and spouse as the only co-owners, are subject to withholding up to the lesser of one hundred percent (100%) of the asset or the amount of arrears owed by the obligor, as set forth in the asset withholding order plus any fees pursuant to section 32-1608(2), Idaho Code. Assets in other multiple party accounts are subject to withholding up to the lesser of a proportionate amount of the asset based upon the number of co-owners or the amount of arrears owed by the obligor, as set forth in the asset withholding order, plus any fees pursuant to section 32-1608(2), Idaho Code. [I.C., § 56-203F, as added by 1997, ch. 315, § 1, p. 931; am. 1998, ch. 227, § 1, p. 776; am. and redig. 2004, ch. 213, § 1, p. 640.]

#### STATUTORY NOTES

**Compiler's Notes.** — This section was formerly compiled as § 56-203F.

**Federal References.** — P.L. 104-193, sec. 372 and title IV-D of the Social Security Act



referred to in subsection (1) of this section are compiled as 42 U.S.C., § 666 and 42 U.S.C., § 651 et seq., respectively.

**Effective Dates.** — Section 2 of S.L. 1997, ch. 315 declared an emergency. Approved March 24, 1997.

**32-1602. Definitions.** — As used in this chapter:

(1) “Arrears” means child or spousal support that is due, owing and unpaid pursuant to a support order.

(2) “Asset” means cash or cash value in or of a demand deposit account, checking or negotiable withdrawal order account, savings account, share account, share draft account, time deposit account or money market mutual fund account; and/or negotiable instruments including stocks and bonds, annuities, investment accounts or funds, and the cash value of insurance.

(3) “Asset withholding order” means an administrative order issued by the department of health and welfare to a financial institution requiring the freezing and surrender of an asset in which an obligor has an interest.

(4) “Child support” means the obligation, pursuant to a support order, to provide for the needs of a child, including food, clothing, shelter, education, day care and health care. “Child support” also includes reimbursement to any agency for medical assistance, assistance paid to families with children, and interest owed on such support.

(5) “Co-owner” means a person having withdrawal rights on a multiple party account.

(6) “Department” means the Idaho department of health and welfare.

(7) “Financial institution” means a bank, credit union or other depository institution, benefit association, insurance company, safe deposit company, money market mutual fund and other entities defined in 42 U.S.C. 669a(d)(1).

(8) “Obligor” means any person obligated by support order to pay child or spousal support.

(9) “Owner” means a person or entity who, by the terms of the account, has a present right, subject to a proper request in compliance with terms of the account, to payment from the account.

(10) “Spousal support” means the obligation, pursuant to a support order, to provide for a spouse or a former spouse.

(11) “Support order” means a judgment, decree, or administrative order from any state, directing one (1) or more individuals to pay child support or spousal support. [I.C., § 32-1602, as added by 2004, ch. 213, § 2, p. 640.]

**32-1603. Withholding of assets — Grounds and issuance.** — When the department receives information from a data matching process that an obligor is an owner or co-owner of an asset held by a financial institution, the department may issue an asset withholding order. Any asset which is subject to a previously perfected security interest or right of set-off from the financial institution is subject to withholding only as to the unencumbered portion of the asset. [I.C., § 32-1603, as added by 2004, ch. 213, § 2, p. 640.]

**32-1604. Content of asset withholding order.** — An asset withholding order shall contain:

(1) The name of the obligor and any known co-owner or multiple party account holder;

- (2) The address of the obligor as listed in the department's records;
- (3) The account number or other means of identifying the asset subject to the withholding order;
- (4) The amount of arrears owed by the obligor;
- (5) Other information as determined by the department. [I.C., § 32-1604, as added by 2004, ch. 213, § 2, p. 640.]

**32-1605. Receipt and acceptance of asset withholding order. —**

(1) When an asset withholding order is received by a financial institution pursuant to this chapter, the financial institution shall immediately freeze the asset subject to the withholding order up to the maximum amount as set forth in section 32-1601(6), Idaho Code. Financial institutions shall accept the asset withholding order at any office of the financial institution located in this state, or at a particular office in this state or another state designated by the financial institution for the service of attachment, execution and garnishment papers pursuant to section 8-507(b), Idaho Code.

If the financial institution has designated a particular office for service of attachment, execution and garnishment papers pursuant to section 8-507(b), Idaho Code, and the asset withholding order is received by another office of the financial institution, it is within the discretion of the financial institution to accept the order and promptly forward the order to the designated office; not accept the order and promptly forward the order to the designated office; or promptly return it to the department. If a financial institution has chosen to accept the order at a nondesignated office, the financial institution's duties pursuant to section 32-1608(1), Idaho Code, shall be effective upon acceptance at that office, and the time periods for the financial institution's duties pursuant to subsections (2) and (3) of section 32-1608, Idaho Code, shall begin to run upon receipt of the order at the designated office.

(2) Unless otherwise notified by the department pursuant to this chapter, the financial institution shall release the asset to the obligor on the seventy-sixth day after the financial institution receives the asset withholding order.

(3) The department shall provide the financial institution with copies of the order and notice required by section 32-1607, Idaho Code, to forward to the obligor and any co-owner. [I.C., § 32-1605, as added by 2004, ch. 213, § 2, p. 640.]

**32-1606. Delivery of an asset withholding order and acceptance of jurisdiction. —**

(1) A financial institution shall accept an asset withholding order by any form of U.S. mail, commercial mail, delivery service, by facsimile or other electronic form of correspondence. If the asset withholding order is delivered electronically, the effective date shall be the date the electronic copy is received. An additional copy of the order shall also be sent to the financial institution by regular mail.

(2) If the financial institution elects to designate an out-of-state office to accept or process an asset withholding order, such election shall act as a waiver of any claim of defect in jurisdiction. [I.C., § 32-1606, as added by 2004, ch. 213, § 2, p. 640.]

**32-1607. Notice.** — Upon the issuance of an asset withholding order to the financial institution, the department shall, within one (1) business day, send to the obligor by certified mail, at the last known address in the department's records, a copy of the asset withholding order and a notice containing the following:

- (1) The obligor's and/or the co-owner's right to a hearing;
- (2) The request for a hearing must be in writing and received by the department within fourteen (14) days after the date of mailing the notice;
- (3) That the asset subject to the withholding order will be applied to the arrears unless a timely request for hearing is made;
- (4) That the asset will be released by the department if the obligor pays the arrears and the current support obligation in full; and
- (5) The grounds to contest the asset withholding order:
  - (a) The amount of arrears;
  - (b) The validity of the order;
  - (c) The extent of the obligor's interest in the asset; and
  - (d) The amount which qualifies as a homestead exemption pursuant to section 55-1008, Idaho Code. [I.C., § 32-1607, as added by 2004, ch. 213, § 2, p. 640.]

**32-1608. Duties of the financial institution.** — (1) Upon receipt or acceptance of an asset withholding order issued by the department pursuant to this chapter, the financial institution shall immediately freeze the asset subject to the withholding order up to the maximum amount as set forth in section 32-1601(6), Idaho Code. The financial institution shall honor the terms of the account of the said asset, except when the terms conflict with compliance with this chapter. The financial institution shall freeze, release or surrender the asset as provided in this chapter.

(2) The financial institution shall be required to mail, within two (2) business days, copies of the asset withholding order and notice, provided by the department pursuant to section 32-1605(3), Idaho Code, to the obligor and to each co-owner, based on the records of the financial institution. A fee not to exceed five dollars (\$5.00) per mailing may be assessed by the financial institution for sending the required copies of the documents. The fee can be withheld in addition to the amount ordered withheld. If funds are inadequate to cover the amount of the asset withholding order and the fees, the fees may be withheld from the asset before the remaining balance is applied to the withholding order.

(3) The financial institution shall complete and return to the department any asset verification form provided by the department within fourteen (14) days from the date of receipt of the asset verification form.

(4) Upon notification by the department that the obligor has not filed a request for hearing within the allowed time, the financial institution will release the asset promptly to the department by sending the funds to the department. [I.C., § 32-1608, as added by 2004, ch. 213, § 2, p. 640.]

**32-1609. No request for hearing.** — If the obligor or a co-owner has not filed a request for hearing within fourteen (14) days after the date the



department mailed the notice to the obligor, the department shall notify the financial institution and the financial institution shall promptly surrender the amount of the asset that has been frozen to the department. The department shall apply this amount to the obligor's arrears. [I.C., § 32-1609, as added by 2004, ch. 213, § 2, p. 640.]

**32-1610. Hearing to contest asset withholding.** — (1) Within five (5) business days of receiving a timely request for hearing, the department will schedule the administrative hearing date and notify the obligor and any co-owners by mail. Upon receiving the request for hearing, the department shall notify the financial institution that it must continue to hold the asset until an order is issued and the department provides instructions for the disposition of the asset pursuant to section 32-1612, Idaho Code.

(2) The department will hold an administrative hearing within thirty (30) days from the day the department receives the request for hearing. [I.C., § 32-1610, as added by 2004, ch. 213, § 2, p. 640.]

**32-1611. Basis to contest the asset withholding order.** — The obligor who owes the support or any co-owner of the asset that is subject to the asset withholding order may contest the order to withhold. Contests are limited to the following issues:

- (1) The amount of the arrears;
- (2) The validity of the order;
- (3) The extent of the obligor's interest in the asset; or

(4) The amount which qualifies as a homestead exemption pursuant to section 55-1008, Idaho Code.

Issues that have been previously adjudicated may not be contested. [I.C., § 32-1611, as added by 2004, ch. 213, § 2, p. 640.]

**32-1612. Order from hearing.** — (1) The department shall issue an order based upon the hearing that rejects the contest or supports the contest in whole or part. The parties may file an appeal with the district court within twenty-eight (28) days, notwithstanding the provisions of section 67-5243, Idaho Code.

(2) The department shall notify the financial institution in writing, within two (2) business days after the receipt of the order, as to the outcome of the hearing, and provide instructions to the financial institution as to the disposition of the asset that has been frozen. [I.C., § 32-1612, as added by 2004, ch. 213, § 2, p. 640.]

**32-1613. Default.** — (1) The allegations of the asset withholding order shall be deemed admitted and the department shall issue an order upholding the asset withholding order if the obligor or co-owner fails to appear at the hearing without good cause. The default and issuance of any subsequent order shall be entered pursuant to the department's rules governing contested case proceedings.

(2) The department shall notify the financial institution in writing, within two (2) business days after the receipt of the default order, and

provide instructions to the financial institution as to the disposition of the asset that has been frozen. [I.C., § 32-1613, as added by 2004, ch. 213, § 2, p. 640.]

**32-1614. Liability of financial institution.** — Notwithstanding any other provisions of federal or state law, any financial institution, or officer, agent or employee of the financial institution, acting in good faith, shall be immune from all civil and criminal liability for withholding funds, freezing assets, turning over assets or otherwise complying or attempting to comply with the provisions of this chapter or for disclosing any information to a state child support enforcement agency pursuant to this chapter. A financial institution shall not be required to give notice to any owner or co-owner of the financial institution concerning whom the financial institution has provided information pursuant to the data match process. The state child support enforcement agency which obtains information from any financial institution may disclose such information only for the purpose of, and to the extent necessary to establish, modify or enforce a support obligation of an obligor. [I.C., § 32-1614, as added by 2004, ch. 213, § 2, p. 640.]





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